U.S. Department of Justice
Criminal Division
Asset Forfeiture and Money Laundering Section

Federal Money Laundering Cases

Cases Interpreting the Federal Money Laundering Statutes and Related Forfeiture Provisions
18 U.S.C. §§ 1956-57 and 18 U.S.C. §§ 981-82

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Preface

The Money Laundering Control Act of 1986 made it a federal criminal offense to conduct a financial transaction involving the proceeds of another crime. As amended in 1988 and in 1992, it also made it possible for federal law enforcement to forfeit all property "involved in" the money laundering offense or a conspiracy to commit one. The substantive and conspiracy offenses are codified at 18 U.S.C. §§ 1956 and 1957, and the corresponding civil and criminal forfeiture statutes are codified at 18 U.S.C. §§ 981 and 982.

In the twelve years since those statutes were enacted, the federal courts have issued hundreds of decisions interpreting all significant aspects of the statutes themselves and related issues that arise in litigation. This book collects virtually all of the reported cases. It is intended to serve as a research tool and guide for federal prosecutors as well as a supplement to the *Money Laundering Manual*, also published by the Asset Forfeiture and Money Laundering Section (AFMLS), Criminal Division, Department of Justice. The cases are organized topically, addressing first the elements of the respective statutes, and then, other issues that have arisen frequently in federal litigation. The parenthetical explanations accompanying each citation are intended only to assist the reader in using this book and do not necessarily represent the policies or legal opinions of the Department of Justice.

The cases are divided into two major categories: substantive money laundering (part I) and money laundering forfeiture (part II). Updates for both sections are available on the Asset Forfeiture Online (AFO), maintained by AFMLS. The substantive money laundering cases are contained in a file called "mlcases"; the forfeiture cases are in a file called "mlfft." Both outlines are updated regularly. For assistance in gaining access to the AFO, please contact the system operator at (202) 514-1263. Access is restricted to law enforcement agencies only.

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Part I—Substantive Money Laundering

18 U.S.C. §§ 1956-1957

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Part I—Substantive Money Laundering

18 U.S.C. §§ 1956-57

Case Outline

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Asset Forfeiture and Money Laundering Section

I. Transaction

A "transaction" is defined in 18 U.S.C. § 1956(c)(3) as a purchase, sale, loan, pledge, gift, transfer, delivery, or other "disposition" of property.

— If the "transaction" is "by, to or through" a financial institution, it includes any "payment, transfer or delivery" of funds, "by whatever means effected."

— Examples include any "deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of stock, bond, certificate of deposit, or other monetary instrument, or use of a safe deposit box."

A. Transporting property from one place to another is not a transaction; the Government must demonstrate that the defendant effected a "disposition" of the property:

— *United States v. Puig-Infante*, 19 F.3d 929 (5th Cir. 1994) (transporting drug proceeds from Florida to Texas *not* a "transaction" absent evidence of disposition once cash arrived at destination).

— *United States v. Gonzalez-Rodriguez*, 966 F.2d 918 (5th Cir. 1992) (carrying cash through airport *not* a transaction).

— *United States v. Bell*, 936 F.2d 337 (7th Cir. 1991) (depositing money in a safe deposit box was *not* a transaction before 1992 amendment to section 1956(c)(3)).

B. Simple possession of criminal proceeds is insufficient to show there was a transaction:

— *United States v. Garza*, 118 F.3d 278(5th Cir. 1997) (the Government must show more than that defendants were in possession of a stash of drug proceeds).

— *United States v. Ramirez*, 954 F.2d 1035 (5th Cir. 1992) (constructive possession of cash in a shoe box in brother's house is insufficient evidence of a transaction).

C. Transfer of property from one person to another is a transaction:

— *United States v. Abrego*, 141 F.3d 142 (5th Cir. 1998) (transfer of vehicle containing cash from one person to another is a 'transaction').

— *United States v. Flores*, 63 F.3d 1342 (5th Cir. 1995) (picking up cash from A and delivering car containing the cash to B is a transaction).

— *United States v. Reed*, 77 F.3d 139 (6th Cir. 1996) (delivery of drug proceeds to a courier is a transaction), overruling *United States v. Oleson*, 44 F.3d 381 (6th Cir. 1995), and *United States v. Samour*, 9 F.3d 531 (6th Cir. 1993).

— *United States v. Gough*, ___ F.3d ___, 1998 WL 498746 (9th Cir. Aug. 20, 1998) (delivery of van containing drug proceeds to a third party who unloads it is a financial transaction, following *Abrego, Flores*, and *Reed*).

— *United States v. Gaytan*, 74 F.3d 545 (5th Cir. 1996) (delivery of cash to another person and storage of cash in third person's residence, are transactions involving a "disposition").

— *United States v. Otis*, 127 F.3d 829 (9th Cir. 1997) (drug dealer's delivery of cash to money launderer is a transaction).

— *United States v. Wydermyer*, 51 F.3d 319 (2d Cir. 1995) (transporting cash to Europe for deposit into European bank is a "delivery or other disposition").

— *United States v. Gallo*, 927 F.2d 815, 822 (5th Cir. 1991) (transfer of cash from one car to another is a transaction).

— *United States v. Dimeck*, 24 F.3d 1239 (10th Cir. 1994) (delivering cash to another to transport across state lines is a transaction) (conviction reversed on other grounds, *see* page 44).

— *United States v. Hamilton*, 931 F.2d 1046, 1051 (5th Cir. 1991) (sending cash through the mail to another person is a transaction).

D. Exchange of cash for a monetary instrument is a transaction:

— *United States v. Leslie*, 103 F.3d 1093 (2d Cir. 1997) (where cash is exchanged for a check, it is not necessary for the check to be deposited and cleared for there to be a "transaction").

E. Bank deposit:

— *United States v. Li*, 55 F.3d 325, 330 (7th Cir. 1995) ("deposit" may refer to either the delivery of a check to a bank or the bank's processing of the check, or both).

F. Purchase:

— *United States v. Abrego*, 141 F.3d 142 (5th Cir. 1998) (using cash to purchase personal property is a transaction).

II. Financial Transaction

"Financial transaction" is defined by 18 U.S.C. § 1956(c)(4) as follows:

"(A) a transaction which in any way or degree affects interstate or foreign commerce

"(i) involving the movement of funds by wire or other means, or

"(ii) involving one or more monetary instruments, or

"(iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or

"(B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree."

A. "Movement of funds by wire or other means":

— *United States v. Herron*, 97 F.3d 234, 237 (8th Cir. 1996) (wire transfer through Western Union is a financial transaction).

— *United States v. Arditti*, 955 F.2d 231 (5th Cir. 1992) (transfer of cashiers checks may not involve "monetary instruments," but it involves the "movement of funds by wire or other means"; noting that section 1956(c)(5) defines "bank checks" but not "cashiers checks" as monetary instruments).

— *United States v. Reed*, 77 F.3d 139 (6th Cir. 1996) (giving drug proceeds to a courier involves the movement of funds by means of the courier).

— *United States v. Dimeck*, 24 F.3d 1239 (10th Cir. 1994) (transporting cash involves movement of funds *by other means*); *United States v. Wydermyer*, 51 F.3d 319 (2d Cir. 1995); *United States v. Flores*, 63 F.3d 1342 (5th Cir. 1995).

— *United States v. Werber*, 787 F. Supp. 353, 356 & n.4 (S.D.N.Y. 1992) (the sale of an automobile is a financial transaction because it involves the movement of funds from the buyer to the seller; the movement of funds need not be from the defendant).

B. "Monetary instruments":

Monetary instruments are defined by 18 U.S.C. § 1956(c)(5) to include domestic or foreign currency, travelers checks, bank checks, personal checks, money orders, and securities in bearer form.

— *United States v. Akintobi*, ___ F.3d ___, 1998 WL 734386 (9th Cir. Oct. 22, 1998) (paying credit card balance with an NSF check is a financial transaction).

— *United States v. Rounsavall*, 115 F.3d 561 (8th Cir. 1997) (writing check to purchase cashiers checks is financial transaction).

— *United States v. Reed*, 77 F.3d 139 (6th Cir. 1996) (giving drug proceeds to a courier "involves monetary instruments, namely the currency").

— *United States v. Wydermyer*, 51 F.3d 319 (2d Cir. 1995) (transporting cash to Europe for deposit into European bank is a financial transaction involving "monetary instruments").

— *United States v. Napoli*, 54 F.3d 63 (2d Cir. 1995) (negotiating fraudulent checks is a financial transaction).

— *United States v. Hamilton*, 931 F.2d 1046, 1051 (5th Cir. 1991) (sending cash through the mail is a financial transaction).

— *United States v. Isabel*, 945 F.2d 1193 (1st Cir. 1991) (giving a check in exchange for cash is a financial transaction).

— *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (sale of car for cash is a financial transaction).

C. "Transfer of title":

— *United States v. Westbrook*, 119 F.3d 1176 (5th Cir. 1997) (purchase of vehicle is a financial transaction because it involves transfer of title).

D. "Use of a financial institution":

— *United States v. Leslie*, 103 F.3d 1093 (2d Cir. 1997) (exchanging cash for a check drawn on a federal savings bank is a "financial transaction").

— *United States v. Jackson*, 935 F.2d 832, 841 (7th Cir. 1991) (writing a check to a vendor "involves the use of a financial institution"—*i.e.*, the bank on which the check is drawn).

— *United States v. Koller*, 956 F.2d 1408 (7th Cir. 1992), *reh'g en banc denied*, 1992 U.S. App. LEXIS 7563 (1992) (making a payment with a money order issued by a bank is a financial transaction; there is no requirement that the use of the financial institution be part of, contribute to, or facilitate the money laundering activity).

— *United States v. Brown*, 31 F.3d 484, 489 n.4 (7th Cir. 1994) (processing credit card charges involves "payment, transfer, or delivery by, through or to a financial institution").

E. The financial transaction is the unit of prosecution:

— *United States v. Smith*, 44 F.3d 1259, 1265 (4th Cir. 1995) (the financial transaction is the "core" of the money laundering offense, distinguishing one money laundering offense from another).

F. Multiplicity:

— *United States v. Martin*, 933 F.2d 609 (8th Cir. 1991) (each transaction is a separate offense, chargeable as a separate count in the indictment; "it is the individual acts of money laundering which are prohibited . . ., and not the course of action . . .").

— *United States v. Smith*, 46 F.3d 1223 (1st Cir. 1995) (each transfer of funds is a separate section 1957 offense, even though they all flow from a single lump sum and all occur on the same day).

— *United States v. Rounsavall*, 115 F.3d 561 (8th Cir. 1997) (deposit of SUA proceeds into bank account, withdrawal from that account to buy cashiers checks, and use of the cashiers checks to buy real estate constitute separate financial transactions that may be charged in separate counts).

G. Duplicity:

— *United States v. Prescott*, 42 F.3d 1165 (8th Cir. 1994) (charging multiple financial transactions as a continuing course of conduct in a single count is duplicitous).

— *United States v. Conley*, 826 F. Supp. 1536 (W.D. Pa. 1993) (dismissing duplicitous charge with leave to refile).

— *Cf. United States v. Kramer*, 73 F.3d 1067 (11th Cir. 1996) ("transfer" under section 1956(a)(2) is not a continuing offense; each transfer is a separate offense).

— *But see United States v. Gordon*, 990 F. Supp. 171 (E.D.N.Y. 1998) (single money laundering count charging multiple financial transactions *not* duplicitous where all transactions were part of single continuous scheme; applying *U.S. v. Margiotta*, 646 F.2d 729 (2d Cir. 1981) (multiple mailings may be charged in single mail fraud count)).

III. Financial Institution

"Financial institution" has the meaning set forth in 31 U.S.C. § 5312(a)(2) "or the regulations promulgated thereunder." *See* 18 U.S.C. § 1956(c)(6).

— The definition in section 5312(a)(2) is extremely broad, and includes many nontraditional financial institutions; *compare* the definition of "financial institution" in 18 U.S.C. § 20.

— Before 1992, the definition in section 1956(c)(6) said a financial institution was any entity listed in section 5312(a)(2) *and* the regulations promulgated thereunder; use of the disjunctive means that entities listed in the regulations, but not in the statute, are now covered. 137 Cong. Rec. S12240 (daily ed. Aug. 2, 1991) (statement of Sen. D'Amato).

A. An individual can be a financial institution:

— *United States v. Tannenbaum*, 934 F.2d 8 (2d Cir. 1991) (individual was a financial institution).

— *United States v. Gollott*, 939 F.2d 255 (5th Cir. 1991) (group of individuals laundering cash for undercover agent were required to file CTRs).

— *United States v. Schmidt*, 947 F.2d 362 (9th Cir. 1991) (individual exchanging checks for cash required to file CTRs).

— *United States v. Levy*, 969 F.2d 136, 140 (5th Cir. 1992) (same; Secretary of the Treasury has authority to define "financial institution" broadly).

B. Investment companies:

— *United States v. Clines*, 958 F.2d 578, 582 (4th Cir.), *cert. denied*, 505 U.S. 1205 (1992) (investment company that receives clients' funds and invests them is financial institution under, *inter alia*, 31 U.S.C. § 5312(a)(2)(I)).

IV. Interstate Commerce

"The interstate commerce element of the money laundering statute, while an essential element, is jurisdictional in nature. . . . Hence, the [G]overnment's burden is not heavy."

— *United States v. Leslie*, 103 F.3d 1093 (2d Cir. 1997).

A. Use of bank implicates interstate commerce:

— *United States v. Ripinsky*, 109 F.3d 1436 (9th Cir. 1997) (only if the transaction was purely intrastate must the Government show that it had some *effect on* interstate commerce; otherwise, the Government simply shows that the transaction occurred *in* interstate commerce); *id.* (check drawn on FDIC-insured bank is *in* interstate commerce and therefore need not *affect* interstate commerce).

— *United States v. Ladum*, 141 F.3d 1328 (9th Cir. 1998) (evidence gleaned from defendant's bank statement and canceled checks establishes defendant's bank did business in interstate commerce).

— *United States v. Lovett*, 964 F.2d 1029, 1039 (10th Cir. 1992) (intrastate transfer from one bank to another implicates interstate commerce if funds are later used to purchase goods in interstate commerce; *e.g.*, jewelry, car, house where settlement handled by out-of-state title company)

— *United States v. Jackson*, 935 F.2d 832 (7th Cir. 1991) (transaction involving check drawn on a bank implicates interstate commerce); *but see United States v. Leslie*, 103 F.3d 1093 (2d Cir. 1997) (check drawn on bank with the word "federal" in its name implicates interstate commerce, but as to other banks, government must present evidence that bank engages in interstate commerce, such as FDIC insurance).

— *United States v. Koller*, 956 F.2d 1408 (7th Cir. 1992), *reh'g en banc denied*, 1992 U.S. App. LEXIS 7563 (1992) (transaction involving money order issued by bank implicates interstate commerce; that use of the bank was incidental to the offense doesn't matter).

— *United States v. Peay*, 972 F.2d 71 (4th Cir. 1992) (transaction involving funds on deposit at a financial institution insured by FDIC affects interstate commerce); *United States v. Kunzman*, 54 F.3d 1522 (10th Cir. 1995) (same).

— *United States v. Wadena*, 152 F.3d 831 (8th Cir. 1998) (deposit of check into FDIC-insured bank is sufficient to establish interstate commerce nexus; following *Kunzman* and *Peay*).

— *United States v. Trammell*, 133F.3d 1343 (10th Cir. 1998) (depositing checks drawn

on FDIC-insured bank, and wiring money from bank in one state to bank in another affects interstate commerce).

— *See* other section 1957 cases at page 56.

B. Effect on commerce established by the nature of the SUA offense:

— *United States v. Wilkinson*, 137 F.3d 214 (4th Cir. 1998) (intrastate transfer affects interstate commerce because defendant was laundering funds taken from out-of-state victim).

— *United States v. Goodwin*, 141 F.3d 394 (2d Cir. 1997) (laundering drug money always implicates interstate commerce); *United States v. Gallo*, 927 F.2d 815 (5th Cir. 1991) (same); *United States v. Westbrook*, 119 F.3d 1176 (5th Cir. 1997) (reaffirming *Gallo*); *United States v. Farley*, 760 F. Supp. 461, 463 (E.D. Pa. 1991).

C. Effect on commerce shown by the way defendant conceals or disguises funds:

— *United States v. Wilkinson*, 137 F.3d 214 (4th Cir. 1998) (commerce requirement satisfied where defendant conceals and disguises true nature of intrastate funds transfer by falsely identifying source of the funds in interstate fax).

D. Insufficient impact on interstate commerce:

— *United States v. Grey*, 56 F.3d 1219 (10th Cir. 1995) (simple transfer of cash does *not* affect interstate commerce; the Government must show source of the money or follow the cash after the transfer to show how interstate commerce was affected).

— *United States v. Koller*, 956 F.2d 1408 (7th Cir. 1992), *reh'g en banc denied*, 1992 U.S. App. LEXIS 7563 (1992) (dicta) (simple payment of restitution obligation with cash would not have implicated interstate commerce).

E. Minimal impact sufficient for commercial transactions:

— *United States v. Ripinsky*, 109 F.3d 1436 (9th Cir. 1997) (if the transaction is commercial in nature, the Government need only prove that it had a minimal effect on interstate commerce that, through repetition by others, could have a substantial effect); *United States v. Goodwin*, 141 F.3d 394 (2d Cir. 1997) (same).

— *United States v. Leslie*, 103 F.3d 1093 (2d Cir. 1997) (use of check drawn on account of a real estate business implicates interstate commerce because of the nature of real estate markets).

— *United States v. Van Brocklin*, 115 F.3d 587 (8th Cir. 1997) ($1.3 million transaction involving banks in three states affected interstate commerce).

burden of showing check drawn on account involved SUA proceeds by showing that $80,000 in proceeds were deposited into the account and commingled with other funds; strict tracing not required).

— *United States v. Suba*, 132 F.3d 662 (11th Cir. 1998) (following *Cancelliere*; transfer of $1.7 million involved SUA proceeds even though defendant had obtained only $1.4 million in fraud proceeds).

— *United States v. Rodriguez*, 53 F.3d 1439 (7th Cir. 1995) (purchase of house involved SUA proceeds even though only $1,000 of $17,000 payment was drug money).

— *United States v. Garcia*, 37 F.3d 1359 (9th Cir. 1994) ("it is sufficient to prove that the funds in question came from an account in which tainted proceeds were commingled with other funds"); *United States v. English*, 92 F.3d 909 (9th Cir. 1996) (following *Garcia*).

— *United States v. Marbella*, 73 F.3d 1508 (9th Cir. 1996) (once SUA proceeds are commingled in an account, any withdrawal from that account involves proceeds, even if the balance in the account drops to zero between the time the proceeds are deposited and the time of the withdrawal); *United States v. Rutgard*, 108 F.3d 1041 (9th Cir. 1997) ("if section 1956 required tracing of specific funds, it could be wholly frustrated by commingling).

— *United States v. Bencs*, 28 F.3d 555 (6th Cir. 1994) (money launderer may not escape liability by commingling drug proceeds with other assets).

— *United States v. Jackson*, 935 F.2d 832, 840 (7th Cir. 1991) (transactions drawn on account containing commingled funds "involve" proceeds of SUA).

— *United States v. Jackson*, 983 F.2d 757 (7th Cir. 1993) (jury instruction that "substantial portion" of laundered funds had to be SUA proceeds was unnecessarily favorable to defendant; only some of commingled funds need be proceeds).

— *United States v. $633,021.67 in U.S. Currency*, 842 F. Supp. 528 (N.D. Ga. 1993) (to forfeit funds involved in a money laundering transaction, the Government "need not trace the origin of all funds deposited into a bank account to determine exactly which funds were used for what transactions").

— *United States v. One 1987 Mercedes Benz 300E*, 820 F. Supp. 248 (E.D. Va. 1993) (payment with check drawn on account into which SUA proceeds were deposited is transaction involving proceeds).

Note: Different rule applies to section 1957 cases; *see* page 55.

predicate offense).

— *United States v. Mankarious*, 151 F.3d 694 (7th Cir. 1998) (where SUA is mail fraud, Government need only show that laundered funds came from a fraudulent scheme and that the use of the mails furthered that scheme;

— *United States v. Carr*, 25 F.3d 1194 (3d Cir. 1994); *United States v. Bencs*, 28 F.3d 555 (6th Cir. 1994).

E. Tracing proceeds as they change form:

— *United States v. Mankarious*, 151 F.3d 694 (7th Cir. 1998) (if check constituting SUA proceeds is deposited in bank account, and second check is written on that account, second check constitutes proceeds, even if first check has not yet cleared).

F. Once proceeds, always proceeds:

— *United States v. Moore*, 27 F.3d 969, 976 (4th Cir. 1994) (real property was purchased with proceeds of fraud, so sale of property could be prosecuted as money laundering even though, at the time defendant committed the fraud and purchased the property, section 1957 had not been enacted).

G. Proceeds may be derived from SUA committed by someone else:

— *United States v. Smith*, 46 F.3d 1223, 1234 (1st Cir. 1995) (section 1957 has no requirement that the defendant committed the predicate crime).

— *United States v. Finn*, 919 F. Supp. 1305 (D. Minn. 1995) (the Government not required to show the defendant committed the underlying theft or fraud).

H. Transactions involving commingled funds; only part of money involved in the transaction need be derived from SUA:

— *United States v. Wilkinson*, 137 F.3d 214 (4th Cir. 1998) (where money is drawn on a commingled account, the Government is entitled to presume that funds "up to the full amount originally derived from crime" were involved in the transaction).

— *United States v. Tencer*, 107 F.3d 1120 (5th Cir. 1997) (where defendant deposited $451,000 in fraud proceeds and $2.2 million in other funds into accounts, subsequent transfers from those accounts "involved" SUA proceeds).

— *United States v. Habhab*, 132 F.3d 410 (8th Cir. 1997) (check written on account into which fraud proceeds were deposited involved SUA proceeds).

— *United States v. Cancelliere*, 69 F.3d 1116 (11th Cir. 1995) (the Government met

— *United States v. Lucas*, 932 F.2d 1210 (8th Cir. 1991) (investment in construction of shopping mall inevitably implicates interstate commerce).

— *United States v. One 1988 Prevost Liberty Motor Home*, 952 F. Supp. 1180 (S.D. Tex. 1996) (buying motorhome with wire transfer from Missouri to Oregon implicates interstate commerce).

— *United States v. Campbell*, 777 F. Supp. 1259 (W.D.N.C. 1991), *rev'd on other grounds*, 977 F.2d 854 (4th Cir. 1992) (buying a house implicates interstate commerce); *United States v. Lowder*, 5 F.3d 467 (10th Cir. 1993) (same).

— *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (buying a car implicates interstate commerce); *United States v. Kelley*, 929 F.2d 582 (10th Cir. 1991) (purchase of car from dealer who will use proceeds of sale to buy more inventory in interstate commerce).

— *United States v. Laurenzana*, 113 F.3d 689 (7th Cir. 1997) (payment of coconspirator's bail with cash affects interstate commerce because the money would be expected to "enter the flow of commerce" after it was received).

F. Conspiracy cases:

— *United States v. Leslie*, 103 F.3d 1093 (2d Cir. 1997) (defendant's belief that interstate commerce will be affected is sufficient for a conspiracy conviction under section 1956(h), but substantive offense requires proof of an actual effect on commerce).

G. Application of *Lopez*:

— *United States v. Goodwin*, 141 F.3d 394 (2d Cir. 1997) (distinguishing *Lopez*; money laundering is a "quintessential economic activity" that "has everything to do with commerce"; moreover, unlike *Lopez*, the money laundering statute requires proof of an effect on interstate commerce).

— *United States v. Leslie*, 103 F.3d 1093 (2d Cir. 1997) (*Lopez* did not elevate the Government's burden; *de minimus* effect on interstate commerce is sufficient); *United States v. Westbrook*, 119 F.3d 1176 (5th Cir. 1997) (same).

— *United States v. Jensen*, 69 F.3d 906 (8th Cir. 1995) (*Lopez* does not apply to money laundering because Congress based the exercise of federal authority not only on the Commerce Clause but also on its authority to collect taxes, duties, imposts, and excises).

— *United States v. Griffith*, 85 F.3d 284 (7th Cir. 1996) (while an isolated state prostitution SUA offense "might lack a federal dimension," the laundering of the SUA proceeds in this case involved interstate commerce; *Lopez* distinguished).

— *United States v. Cleveland*, 951 F. Supp. 1249 (E.D. La. 1997) (section 1956 satisfies *Lopez* both because there is a specific, statutory interstate commerce requirement, and because Congress relied not only on the Commerce Clause but also on its authority to collect taxes).

H. Interstate commerce is an element of the offense:

— *United States v. Ladum*, 141 F.3d 1328 (9th Cir. 1998) (interstate commerce is both jurisdictional and an essential element of the offense).

— *United States v. Goodwin*, 141 F.3d 394 (2d Cir. 1997) (proof of a nexus with interstate commerce is an essential element of money laundering).

— *United States v. Allen*, 129 F.3d 1159 (10th Cir. 1997) (section1957 case: interstate commerce requirement is both jurisdictional and an essential element of the offense; the issue is one for the jury to decide), rejecting contrary statements in earlier Tenth Circuit cases as *dicta*; *United States v. Trammell*, 133 F.3d 1343 (10th Cir. 1998) (following *Allen*).

— *United States v. Aramony*, 88 F.3d 1369 (4th Cir. 1996) (interstate commerce nexus is an essential element of section1957 offense which the Government must prove beyond a reasonable doubt); *United States v. Wilkinson*, 137 F.3d 214 (4th Cir. 1998) (same for section 1956); *United States v. Ripinsky*, 109 F.3d 1436 (9th Cir. 1997) (same).

— *United States v. Leslie*, 103 F.3d 1093 (2d Cir. 1997) (interstate commerce nexus is essential to confer jurisdiction on a federal court, and requires proof beyond a reasonable doubt).

— *United States v. Green*, 964 F.2d 365 (5th Cir. 1992) (where indictment alleges that defendant conducted financial transaction involving a bank, the failure of the indictment to allege that the bank engaged in interstate commerce did not render the indictment defective, since the reference to the bank's involvement adequately apprised the defendant that the Government was alleging an affect on interstate commerce).

— *See also United States v. Van Brocklin*, 115 F.3d 587 (8th Cir. 1997) (noting split in the circuits—before the Tenth Circuit's decision in *Allen*—but leaving unresolved whether interstate commerce is an element of the offense).

— For cases discussing whether an effect on interstate commerce must be alleged in the indictment, *see* page 70.

I. Reopening the Government's case:

— *United States v. Leslie*, 103 F.3d 1093 (2d Cir. 1997) (if the Government neglects to establish interstate commerce nexus and defendant moves to dismiss under Rule 29, the

court may permit the Government to reopen its case to establish the jurisdictional element).

— For discussion of jury's role in determining whether the transaction affects interstate commerce, *see* "jury instructions" at page 73.

V. "Conducts" Financial Transaction

"Conducts" is defined by 18 U.S.C. § 1956(c)(2) to include "initiating, concluding, or participating in initiating or concluding," a transaction.

A. "Initiating" or "concluding":

— *United States v. Li*, 55 F.3d 325, 330 (7th Cir. 1995) ("either initiating or concluding a transaction constitutes the conducting of a transaction").

B. Person who directs others to move money is guilty of "conducting" the financial transaction:

— *United States v. Baez*, 87 F.3d 805 (6th Cir. 1996) (sending a third party from New Jersey to Ohio to pick up drug proceeds and deliver them to another state constitutes "conducting" a financial transaction).

— *United States v. Sneed*, 63 F.3d 381 (5th Cir. 1995) (defendant conducted transaction where he asked associate to open bank account, and associate deposited checks from victims and wired proceeds to defendant's personal account).

— *United States v. Hager*, 1995 WL 529647 (10th Cir. Sept. 8, 1995) (unpublished) (defendant who set up business and hired employees is liable for "conducting" financial transactions when the employees write checks).

— *United States v. Jackson*, 1995 WL 434485 (9th Cir. 1995) (unpublished) (defendant "conducts" transaction carried out by middle man even though he did not know identity of middle man).

— *General Cigar Co. v. CR Carriers*, 948 F. Supp. 1030 (M.D. Ala. 1996) (civil RICO with mney laundering predicates) (person whose approval of invoices causes third party to issue checks "conducts" the financial transaction).

— *See* "attempt" and "aiding and abetting" cases at pages 59-61.

C. Wire transfers:

— *United States v. Smith*, 44 F.3d 1259, 1266 (4th Cir. 1995) (person conducts wire

transfer when he is in constructive control of SUA proceeds and directs another to make the transfer).

— *United States v. Stein*, 1994 WL 285020 (E.D. La. June 23, 1994) (defendant conducts transaction, even though he is abroad, when he orders wire transfer from Louisiana to the United Kingdom).

— *United States v. Elder*, 90 F.3d 1110 (6th Cir. 1996) (receiver of wire transfer "conducts" the transaction).

VI. Knowledge Requirement

"Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from "some form, though not necessarily which form," of activity that constitutes a felony under state, federal, or foreign law; *see* 18 U.S.C. § 1956(c)(1).

A. Knowledge may relate to an offense other than the SUA:

— *United States v. Montague*, 29 F.3d 317 (7th Cir. 1994) (defendant knows money is proceeds of state prostitution offense; SUA is Travel Act).

— *United States v. Boyd*, 149 F.3d 1062 (10th Cir. 1998) (defendant's belief that his acts did not violate section 1955 was irrelevant where defendant knew he was violating state gambling laws).

B. "Unlawful activity" of which defendant has knowledge must be a felony, but the defendant need not know it is a felony:

— *United States v. Stavroulakis*, 952 F.2d 686, 692 n.2 (2d Cir. 1992) (defendant need not know that the underlying activity is unlawful or that it constitutes a felony; it is sufficient for the Government to show that the defendant knew that the property was the proceeds of an activity, such as gambling involving more than a certain amount of money, that is defined as a felony under state [or federal] law).

— *United States v. Hayes*, 800 F. Supp. 1575 (S.D. Ohio 1992) (defendant could not plead guilty to section 1956 offense where underlying SUA was a misdemeanor).

C. "Knowledge" may be shown by proof of willful blindness, deliberate ignorance, or conscious avoidance:

— *United States v. Cunan*, 152 F.3d 29 (1st Cir. 1998) (evidence that defendant, who knew brother-in-law was fugitive from drug charges, turned large cash payments into

5. Accountants:

— *United States v. Bornfield*, 145 F.3d 1123 (10th Cir. 1998) (accountant who prepared drug dealer's tax returns, knew he sold drugs, and knew he had insufficient legitimate income had actual knowledge that client's cash came from drug dealing).

I. Obscenity cases:

— *United States v. Krasner*, 841 F. Supp. 649 (M.D. Pa. 1993) (argument that defendant cannot be convicted of laundering proceeds of obscenity offense because he could not know that proceeds were derived from "unlawful activity" before judicial determination that material was obscene rejected).

J. Sentencing cases:

— *United States v. Sanders*, 942 F.2d 894 (5th Cir. 1991) (circumstantial evidence of defendant's knowledge that money represented criminal proceeds found sufficient to justify sentencing enhancement for currency reporting violation).

— *United States v. Mitchell*, 31 F.3d 628 (8th Cir. 1994) (same).

See "knowledge requirement is not unconstitutionally vague or overbroad" at page 99.

VII. Proceeds

A. "Proceeds" need not be money:

— *United States v. Rounsavall*, 115 F.3d 561 (8th Cir. 1997) (real property purchased with drug money is "proceeds"; sale of that property is money laundering offense).

— *United States v. Werber*, 787 F. Supp. 353, 357 (S.D.N.Y. 1992) (automobile purchased with counterfeit securities was proceeds of securities offense; subsequent resale of automobile was money laundering).

— *United States v. Griffith*, 17 F.3d 865 (6th Cir. 1994) (inventory acquired in fraud scheme is SUA proceeds).

B. Proceeds need not be tangible or actual assets:

— *United States v. Estacio*, 64 F.3d 477 (9th Cir. 1995) (fraudulently obtained line of credit, which results in artificially inflated bank balance, constitutes proceeds).

criminally-derived); *United States v. Hare*, 49 F.3d 447 (8th Cir. 1995) (same for wire fraud).

— *United States v. Shorter*, 54 F.3d 1248 (7th Cir. 1995) (drug dealer knew that the money wired to him by the person to whom he sent cocaine was proceeds).

— *United States v. One 1988 Prevost Liberty Motor Home*, 952 F. Supp. 1180 (S.D. Tex. 1996) (defendant uses proceeds of bankruptcy fraud to buy a motorhome).

E. Cases where defendant is the perpetrator but he argues that he didn't realize the SUA was illegal:

— *United States v. Baker*, 63 F.3d 1478 (9th Cir. 1995) (circumstantial evidence shows defendant acted as if he believed SUA—trafficking in untaxed cigarettes—was illegal).

— *United States v. Boyd*, 149 F.3d 1062 (10th Cir. 1998) (circumstantial evidence shows defendant acted as if he believed conduct in violation of state gambling laws was illegal).

F. Circumstantial evidence may be sufficient to establish the defendant's knowledge of the illegal source of the money where defendant is not the perpetrator of the underlying offense:

— *United States v. Otis*, 127 F.3d 829 (9th Cir. 1997) (defendant's "pager contacts, associations and criminal history" sufficient to show that defendant knew $60,000 he turned over to third party in parking lot was criminal proceeds).

— *United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995) (even underlings who never dealt with drug dealers knew that money they were laundering was drug proceeds because no other cash-generating business would require the laundering of such huge quantities of cash).

— *United States v. Heaps*, 39 F.3d 479 (4th Cir. 1994) (statute requires actual, subjective knowledge, but knowledge may be shown by circumstantial evidence; drug dealer who fronts drugs to consignee "knows" that payments from consignee involve proceeds of unlawful activity).

— *United States v. Atterson*, 926 F.2d 649, 656 (7th Cir. 1991) (defendant is the girlfriend of a drug dealer and wires cash for him).

— *United States v. Jenkins*, 78 F.3d 1283 (8th Cir. 1996) (defendant receives thousands of dollars in cash from teenagers, keeps cash in garbage bags, and wires money for his brother who lives lavish lifestyle and has no visible means of support).

— *United States v. Smith*, 39 F.3d 119 (6th Cir. 1994) (defendant is girlfriend and personal assistant to mastermind of telemarketing scheme and is involved in all business transactions).

— *United States v. Wilson*, 77 F.3d 105 (5th Cir. 1996) (defendant was principal in drug organization and property was cash bundled in the same way that the drug organization bundled its cash).

— *But see United States v. McDougald*, 990 F.2d 259 (6th Cir. 1993) (the Government may not assume any money from drug dealer is drug money; suspicious nature of automobile purchase insufficient to support inference that $10,000 cash was drug money), *distinguished in United States v. Bencs*, 28 F.3d 555, 562 n.8 (6th Cir. 1994).

K. The Government may use "net worth" analysis to establish proceeds element:

— *United States v. Westbrook*, 119 F.3d 1176 (5th Cir. 1997) (evidence that drug dealer's cash outflow for purchase of vehicle exceeds legitimate income sufficient to establish that transaction involves drug proceeds).

— *United States v. Cruz*, 993 F.2d 164 (8th Cir. 1993) (lack of sufficient legitimate income to support cash expenditures supports finding that cash used to buy vehicle was proceeds of marijuana trafficking).

L. Inconsistent verdicts; acquittal on the SUA:

— *United States v. Mankarious*, 151 F.3d 694 (7th Cir. 1998) (because money laundering does not require proof of a specific mail fraud offense, dismissal of specific mail fraud counts has no effect on money laundering counts; it might be different if the money laundering counts specified particular predicate offenses).

— *United States v. Sims*, 144 F.3d 1082 (7th Cir. 1998) (acquittal on underlying drug conspiracy does not require reversal of conviction on money laundering counts).

— *United States v. Tencer*, 107 F.3d 1120 (5th Cir. 1997) (acquittal on particular mail fraud counts did not require acquittal on money laundering where jury could have found that property being laundered was proceeds of other parts of the fraud scheme).

— *United States v. Jackson*, 983 F.2d 757 (7th Cir. 1993) (defendant acquitted of drug conspiracy but convicted of money laundering based on purchase of several cars; court upheld money laundering conviction because, while jury may not have believed that he was involved in conspiracy charged, they still found defendant purchased cars with drug proceeds).

— *United States v. Kennedy*, 64 F.3d 1465 (10th Cir. 1995) (in a mail fraud case, fact that defendant was acquitted of fraudulent mailing to victim did not require acquittal as to money laundering charge involving that victim).

— *United States v. Whatley*, 133 F.3d 601 (8th Cir. 1998) (money laundering conviction

H. Particular third parties shown to have had knowledge or to be willfully blind:

1. Attorneys:

— *United States v. Anderskow*, 88 F.3d 245 (3d Cir. 1996) (attorney who participated in investment scheme that returned nothing to investors and had many other suspicious elements was willfully blind to the fact that the scheme was a fraud and that he was therefore engaged in transferring fraud proceeds).

— *United States v. Nesser*, 939 F. Supp. 417 (W.D. Pa. 1996) (attorney who knew defendant associated with drug traffickers and was himself under investigation for drug trafficking was willfully blind to the source of defendant's money).

2. Bankers:

— *United States v. Giraldi*, 86 F.3d 1368 (5th Cir. 1996) (circumstancial evidence that banker knew or was willfully blind to customer's source of money included false statements and failure to follow know-your-customer policy).

3. Real estate agents:

— *United States v. Campbell*, 977 F.2d 854 (4th Cir. 1992) (jury entitled to infer knowledge of nature of proceeds from defendant real estate agent's knowledge of client's flamboyant lifestyle), *rev'g United States v. Campbell*, 777 F. Supp. 1259 (W.D.N.C. 1991) on this point.

4. Merchants:

— *United States v. Wynn*, 61 F.3d 921 (D.C. Cir. 1995) (evidence that merchant knew customer was a drug dealer included falsification of records, customer's appearance and use of beepers, and his exclusive use of cash in large sums).

— *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (jury could infer that defendant who brokered airplane sale knew that the purchase money was illegally derived where money came in the form of multiple anonymous wire transfers and bundles of checks; defendant made statements about purchaser's involvement in drug trafficking. and defendant made threats of violence, indicating he knew he was not representing a legitimate businessman).

— *United States v. Long*, 977 F.2d 1264, 1269-70 (8th Cir. 1992) (car dealer knew buyer listed false employment on credit application, received payments under the table and lied to grand jury).

checks to pay fugitive's expenses under false names, supported an inference of conscious avoidance of knowledge that the cash came from an unlawful source).

— *United States v. Bornfield*, 145 F.3d 1123 (10th Cir. 1998) (accountant who knew client was a drug dealer with limited legitimate income was deliberately ignorant of source of cash client gave him to convert to a check).

— *United States v. Campbell*, 977 F.2d 854 (4th Cir. 1992) (real estate agent willfully blind to client's use of drug proceeds to purchase house).

— *United States v. Long*, 977 F.2d 1264, 1270-71 (8th Cir. 1992) (car dealer willfully blind to use of drug proceeds to purchase car); *United States v. Antzoulatos*, 962 F.2d 720, 724-25 (7th Cir. 1992) (same); *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (same; dicta).

— *United States v. Jensen*, 69 F.3d 906 (8th Cir. 1995) (defendant remained deliberately ignorant of fact that person loaning him money was a drug dealer).

— *United States v. Fuller*, 974 F.2d 1474 (5th Cir. 1992) (deliberate ignorance may satisfy knowledge requirement in "sting" cases)

— *United States v. Rockson*, 1996 WL 733945 (4th Cir. Dec. 24, 1996) (unpublished) (money transmitter must have been deliberately ignorant of the source of money that was delivered as large quantities of cash in paper bags at night by people who did not ask that it be counted).

— *United States v. Ortiz*, 738 F. Supp. 1394, 1400 n.3 (S.D. Fla. 1990); *United States v. Gleave*, 786 F. Supp. 258, 267 (W.D.N.Y. 1992) (the Government still must prove defendant was on notice of a high probability of the existence of a fact).

— *See* "jury instructions" on willful blindness at page 74.

D. Knowledge of source of the money generally is obvious where defendant was the perpetrator of the underlying offense:

— *United States v. Jackson*, 935 F.2d 832 (7th Cir. 1991) (where defendant is drug dealer with access to lots of cash, and cash is being deposited into defendant's account, jury may conclude that defendant knew the cash was proceeds of his drug trafficking).

— *United States v. Beddow*, 957 F.2d 1330 (6th Cir. 1992), *reh'g en banc denied*, 1992 U.S. App. LEXIS 5051 (1992) (knowledge established with drug dealer's recorded statements saying he invested drug proceeds in gems).

— *United States v. Lombardi*, 5 F.3d 568 (1st Cir. 1993) (since defendant committed the underlying mail frauds, it is unquestioned that he knew that the laundered funds were

— *United States v. Akintobi*, ___ F.3d ___, 1998 WL 734386 (9th Cir. Oct. 22, 1998) (stolen and fraudulently obtained checks are proceeds of mail theft and bank fraud; they are the equivalent of a fraudulently obtained line of credit; negotiating such checks, even if they are drawn on empty accounts, constitutes money laundering).

— *United States v. Ly*, 1998 WL 141334 (9th Cir. Mar. 25, 1998) (unpublished) ("proceeds" includes a fraudulently obtained line of credit).

C. Uncashed check is proceeds:

— *United States v. Hemmingson*, ___ F.3d ___, 1998 WL 671376 (5th Cir. Sept. 30, 1998) (delivery of yet-to-be-cashed check is transaction involving SUA proceeds).

— *United States v. Mankarious*, 151 F.3d 694 (7th Cir. 1998) (assuming without deciding that check constitutes proceeds before it is cashed).

D. The Government need not trace laundered funds back to particular offense:

— *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (evidence that money is traceable to an account used by professional money launderers to launder drug proceeds is sufficient to establish the "proceeds" element).

— *United States v. Hardwell*, 80 F.3d 1471 (10th Cir. 1996) (evidence that the defendant was engaged in drug trafficking and had insufficient legitimate income to produce the money used in the financial transaction was sufficient); *United States v. Herron*, 97 F.3d 234, 237 (8th Cir. 1996) (same).

— *United States v. Blackman*, 904 F.2d 1250, 1257 (8th Cir. 1990) (the Government proved property involved in transaction was drug proceeds by showing defendant was engaged in drug business and was using wire services to move a lot of cash, and by calling expert witness to testify that these transactions were typical of what drug dealers do with drug money).

— *United States v. Eastman*, 149 F.3d 802 (8th Cir. 1998) (following *Blackman*; no need to trace proceeds to particular drug sale; the Government may rely on defendant's involvement in drug trade and lack of legitimate income to prove wired money was drug proceeds).

— *United States v. Habhab*, 132 F.3d 410 (8th Cir. 1997) (evidence that defendant was engaged in fraudulent activity and had received fraud proceeds prior to date of financial transaction charged as money laundering was sufficient to establish money was SUA proceeds).

— *United States v. Jackson*, 983 F.2d 757 (7th Cir. 1993) (the Government only required to prove money came from drug dealing; no need to trace laundered proceeds to specific

— *United States v. Gallo*, 927 F.2d 815 (5th Cir. 1991) (defendant meets drug dealer in a parking lot and receives box of cash and drives off).

— *United States v. Isabel*, 945 F.2d 1193 (1st Cir. 1991) (defendant receives cash from person who says he is a drug dealer and has no legitimate source of income).

— *United States v. Brown*, 944 F.2d 1377 (7th Cir. 1991) (elaborate, time-consuming transactions under $10,000 implies knowledge of illegal source).

— *United States v. Rodriguez*, 53 F.3d 1439 (7th Cir. 1995) (convoluted real estate transactions, from which intent to conceal or disguise may be inferred, also implies knowledge of illegal source; jury could infer knowledge from combination of suspicion and indifference to the truth).

— *United States v. Torres*, 53 F.3d 1129 (10th Cir. 1995) (knowledge inferred from defendant's lack of legitimate income and earlier statements to wife that income could be enhanced from drug sales).

— *United States v. Cota*, 953 F.2d 753 (2d Cir. 1992) (sister of drug dealer knows house she is selling was purchased by drug dealer with drug proceeds).

— *United States v. Carr*, 25 F.3d 1194 (3d Cir. 1994) (listing large number of factors establishing money courier's knowledge of unlawful source of money).

— *United States v. Saccoccia*, 58 F.3d 754 (1st Cir. 1995) (coconspirator's statement that money was "drug money," and that he was dealing with "Colombians," probative of defendant's knowledge).

— *United States v. Brown*, 53 F.3d 312 (11th Cir. 1995) (defendant's testimony, denying knowledge, may establish, by itself, the knowledge element of the offense, if the jury, observing defendant's demeanor, disbelieves the testimony and concludes the opposite is true).

— *United States v. Jensen*, 69 F.3d 906 (8th Cir. 1995) (defendant who borrowed money, in cash, without any documentation, from person who said he "had a large return from a marijuana smuggling deal," knew the money was criminally derived).

G. Defendant must have "knowledge" at the time the financial transaction takes place:

— *United States v. McDougald*, 990 F.2d 259 (6th Cir. 1993) (circumstantial evidence insufficient to prove defendant knew money was proceeds of unlawful activity at the time the transaction occurred; what defendant learned afterwards does not help the Government).

— *United States v. Wilson*, 77 F.3d 105 (5th Cir. 1996) (defendant was principal in drug organization and property was cash bundled in the same way that the drug organization bundled its cash).

— *But see United States v. McDougald*, 990 F.2d 259 (6th Cir. 1993) (the Government may not assume any money from drug dealer is drug money; suspicious nature of automobile purchase insufficient to support inference that $10,000 cash was drug money), *distinguished in United States v. Bencs*, 28 F.3d 555, 562 n.8 (6th Cir. 1994).

K. The Government may use "net worth" analysis to establish proceeds element:

— *United States v. Westbrook*, 119 F.3d 1176 (5th Cir. 1997) (evidence that drug dealer's cash outflow for purchase of vehicle exceeds legitimate income sufficient to establish that transaction involves drug proceeds).

— *United States v. Cruz*, 993 F.2d 164 (8th Cir. 1993) (lack of sufficient legitimate income to support cash expenditures supports finding that cash used to buy vehicle was proceeds of marijuana trafficking).

L. Inconsistent verdicts; acquittal on the SUA:

— *United States v. Mankarious*, 151 F.3d 694 (7th Cir. 1998) (because money laundering does not require proof of a specific mail fraud offense, dismissal of specific mail fraud counts has no effect on money laundering counts; it might be different if the money laundering counts specified particular predicate offenses).

— *United States v. Sims*, 144 F.3d 1082 (7th Cir. 1998) (acquittal on underlying drug conspiracy does not require reversal of conviction on money laundering counts).

— *United States v. Tencer*, 107 F.3d 1120 (5th Cir. 1997) (acquittal on particular mail fraud counts did not require acquittal on money laundering where jury could have found that property being laundered was proceeds of other parts of the fraud scheme).

— *United States v. Jackson*, 983 F.2d 757 (7th Cir. 1993) (defendant acquitted of drug conspiracy but convicted of money laundering based on purchase of several cars; court upheld money laundering conviction because, while jury may not have believed that he was involved in conspiracy charged, they still found defendant purchased cars with drug proceeds).

— *United States v. Kennedy*, 64 F.3d 1465 (10th Cir. 1995) (in a mail fraud case, fact that defendant was acquitted of fraudulent mailing to victim did not require acquittal as to money laundering charge involving that victim).

— *United States v. Whatley*, 133 F.3d 601 (8th Cir. 1998) (money laundering conviction

affirmed notwithstanding jury's acquittal on underlying fraud SUA, as long as there was sufficient evidence to support finding that laundered funds were SUA proceeds).

— *But see United States v. Adkinson*, 135 F.3d 1363 (11th Cir. 1998) (where money laundering count alleges the SUA by referencing specific counts in the indictment, and conviction on those counts is reversed, money laundering conviction must be vacated as well).

— *United States v. Truesdale*, 152 F.3d 443 (5th Cir. 1998) (money laundering convictions must be reversed if they require proof that money was proceeds of gambling scheme in violation of section 1955, and the section 1955 conviction is reversed for lack of proof that there was any violation of that statute).

— *United States v. Ramming*, 915 F. Supp. 854 (S.D. Tex. 1996) (because defendant's motion for judgment of acquittal on underlying fraud offense is granted for lack of evidence, motion must be granted on money laundering counts as well).

M. Proof of the elements of the SUA offense:

— *United States v. Green*, 964 F.2d 365 (5th Cir. 1992) (where defendant challenges whether elements of state bribery offense were satisfied, appellate court will review the Government's proof and elements of offense under applicable state or federal law).

N. Congress did not intend to limit application of the money laundering statutes to drug offenses:

— *United States v. Haun*, 90 F.3d 1096 (6th Cir. 1996).

O. Cases where SUA was not a federal drug offense:

— Proceeds of state drug offense: *United States v. Isabel*, 945 F.2d 1193 (1st Cir. 1991).

— Proceeds of state bribery offense: *United States v. Montoya*, 945 F.2d 1068 (9th Cir. 1991). *United States v. Green*, 964 F.2d 365 (5th Cir. 1992).

— Proceeds of state gambling offense: *United States v. Manarite*, 44 F.3d 1407 (9th Cir. 1995).

— Proceeds of food stamp fraud, 7 U.S.C. § 2024(b)(1): *United States v. Caba*, 911 F. Supp. 630 (E.D.N.Y. 1996).

— Proceeds of securities fraud under 15 U.S.C. § 77q(a) and mail fraud: *United States v. Cole*, 988 F.2d 681 (7th Cir. 1993).

— Assets concealed from bankruptcy trustee in violation of section 152: *United States v.*

Holland, ___ F.3d ___, 1998 WL 768499 (7th Cir. Nov. 5, 1998) (transfer of property concealed from bankruptcy court to third party); *United States v. Woods*, ___ F.3d ___, 1998 WL 767504 (8th Cir. Nov. 5, 1998) (deposit of proceeds of sale of stock concealed from bankruptcy court); *United States v. Ladum*, 141 F.3d 1328 (9th Cir. 1998) (using nominees to conceal ownership and control of income from business concealed from bankruptcy court); *United States v. West*, 22 F.3d 586 (5th Cir. 1994); *United States v. One 1988 Prevost Liberty Motor Home*, 952 F. Supp. 1180 (S.D. Tex. 1996); *United States v. Gleave*, 786 F. Supp. 258, 269 (W.D.N.Y. 1992).

— Bank bribery in violation of section 215: *United States v. Van Brocklin*, 115 F.3d 587 (8th Cir. 1997).

— Proceeds of fraud against government agency in violation of section 286-87: *United States v. Leahy*, 82 F.3d 624 (5th Cir. 1996) (defrauding Veterans Administration).

— Proceeds of uttering and passing counterfeit securities under section 513: *United States v. Allen*, 129 F.3d 1159 (10th Cir. 1997); *United States v. Werber*, 787 F. Supp. 353 (S.D.N.Y. 1992).

— Promotion of general smuggling offense under section 545: *United States v. Lee*, 937 F.2d 1388, 1396 (9th Cir. 1991).

— Theft of public money under section 641: *United States v. Chesney*, 10 F.3d 641 (9th Cir. 1993) (Social Security fraud); *United States v. Puello*, 814 F. Supp. 1155 (E.D.N.Y. 1993) (food stamp fraud); *United States v. Caba*, 1996 WL 685764 (2d Cir. Nov. 29, 1996) (unpublished) (food stamp fraud).

— Embezzlement/false loan application under section 656: *United States v. Cihak*, ___ F.3d ___,1998 WL 99363 (5th Cir. Mar. 9, 1998). *United States v. Nattier*, 127 F.3d 655 (8th Cir. 1997); *United States v. Allen*, 76 F.3d 1348 (5th Cir. 1996); *United States v. Marx*, 991 F.2d 1369 (8th Cir. 1993)

— Misapplied funds belonging to RTC under section 657: *United States v. Adams*, 74 F.3d 1093 (11th Cir. 1996)

— Proceeds of conversion of collateral under section 658: *United States v. Edgmon*, 952 F.2d 1206 (10th Cir. 1991)

— Property embezzled from pension fund under section 664: *United States v. Holmes*, 44 F.3d 1150 (2d Cir. 1995); *United States v. Pelullo*, 961 F. Supp. 736 (D.N.J. 1997).

— Proceeds of theft from organization receiving government funds under section 666: *United States v. Wadena*, 152 F.3d 831 (8th Cir. 1998); *United States v. Pretty*, 98 F.3d 1213 (10th Cir. 1996); *United States v. Peery*, 977 F.2d 1230 (8th Cir.

1992); *United States v. Finn*, 919 F. Supp. 1305 (D. Minn. 1995).

— Funds unlawfully received by a credit union officer under section 1006: *United States v. Smith*, 46 F.3d 1223 (1st Cir. 1995).

— Proceeds of impeding the RTC under section 1032: *United States v. Adams*, 74 F.3d 1093 (11th Cir. 1996).

— Proceeds of transmission of gambling information under section 1084: *United States v. Miller*, 22 F.3d 1075 (11th Cir. 1994).

— Proceeds of fraud under section1341: *United States v. Mathison*, 157 F.3d 541 (8th Cir. 1998) (Ponzi scheme); *United States v. Mankarious*, 151 F.3d 694 (7th Cir. 1998) (kickback scheme); *United States v. Trammell*, 133 F.3d 1343 (10th Cir.1998) (agent defrauds clients of insurance premiums); *United States v. Whatley*, 133 F.3d 6^1 (8th Cir. 1998) (telemarketing fraud); *United States v. Suba*, 132 F.3d 662 (11th Cir. 1998) (Medicare fraud); *United States v. Habhab*, 132 F.3d 410 (8th Cir. 1997) (fraudulent misrepresentations to customers); *United States v. Haun*, 90 F.3d 1096 (6th Cir. 1996) (fraud involving car sales); *United States v. Massey*, 48 F.3d 1560 (10th Cir. 1995); *United States v. Hollis*, 971 F.2d 1441 (10th Cir. 1992) (insurance fraud); *United States v. Cavalier*, 17 F.3d 90 (5th Cir. 1994) (same); *United States v. Paramo*, 998 F.2d 1212 (3d Cir. 1993) (embezzlement of tax refund checks); *United States v. Lombardi*, 5 F.3d 568 (1st Cir. 1993) (insurance fraud); *United States v. Smith*, 13 F.3d 1421 (10th Cir. 1994); *United States v. Caruso*, 948 F. Supp. 382 (D.N.J. 1996) (fraud involving refunds for charitable contributions).

— Proceeds of wire fraud under section 1343: *United States v. Wilkinson*, 137 F.3d 214 (4th Cir.1998) (proceeds of false loan); *United States v. Turman*, 104 F.3d 1191 (9th Cir 1997) (money fraudulently obtained as advance loan fee); *United States v. Hare*, 49 F.3d 447 (8th Cir. 1995); *United States v. Johnson*, 971 F.2d 562 (10th Cir. 1992) (investment fraud); *United States v. Tansley*, 986 F.2d 880 (5th Cir. 1993); *United States v. Smith*, 44 F.3d 1259 (4th Cir. 1995); *United States v. Miller*, ___ F. Supp. 2d ___, 1998 WL 709469 (N.D.N.Y. Oct. 7, 1998) (foreign tax offense charged as wire fraud).

— Proceeds of bank fraud under section 1344: *United States v. Akintobi*, ___ F.3d ___, 1998 WL 734386 (9th Cir. Oct. 22, 1998) (checks obtained by fraudulently opening acct). *United States v. Moore*, 27 F.3d 969 (4th Cir. 1994); *United States v. Piervinanzi*, 23 F.3d 670 (2d Cir. 1994); *United States v. Dillman*, 15 F.3d 384 (5th Cir. 1994) (using proceeds of false loan to recapitalize failing bank); *United States v. Restivo*, 8 F.3d 274 (5th Cir. 1993); *United States v. Harris*, 805 F. Supp. 166, 175 n.1 (S.D.N.Y. 1992); *United States v. Hilliard*, 818 F. Supp. 309 (D. Colo. 1993); *United States v. Brown*, 31 F.3d 484 (7th Cir. 1994); *United States v. Estacio*, 64 F.3d 477 (9th Cir. 1995) (check kiting).

— Theft from the mail under section1708: *United States v. Akintobi*, ___ F.3d ___, 1998 WL 734386 (9th Cir. Oct. 22, 1998) (stolen checks).

— Proceeds of Hobbs Act, section 1951: *United States v. Millet*, 123 F.3d 268 (5th Cir. 1997) (laundering bribe money); *United States v. Hairston*, 46 F.3d 361 (4th Cir. 1995); *United States v. Flynt*, 15 F.3d 1002 (11th Cir. 1994) (concealing extortion checks in wife's account); *United States v. Knight*, 822 F. Supp. 1071 (S.D.N.Y. 1993); *United States v. One 1987 Mercedes Benz 300E*, 820 F. Supp. 248 (E.D. Va. 1993).

— Proceeds of Travel Act, section 1952: *United States v. Griffith*, 85 F.3d 284 (7th Cir. 1996) (interstate transportation of prostitution proceeds); *United States v. Montague*, 29 F.3d 317 (7th Cir. 1994) (same); *United States v. One 1987 Mercedes Benz 300E*, 820 F. Supp. 248 (E.D. Va. 1993).

— Proceeds of ERISA violation, section 1954: *United States v. Li*, 55 F.3d 325 (7th Cir. 1995).

— Proceeds of gambling under section 1955: *United States v. Miller*, 22 F.3d 1075 (11th Cir. 1994); *United States v. Conley*, 37 F.3d 970 (3d Cir. 1994); *United States v. Cleveland*, 1997 WL 527335 (E.D. La. Apr. 22, 1997).

— Funds involved in ITSP offense under section 2314: *United States v. Lovett*, 964 F.2d 1029 (10th Cir. 1992) (funds stolen in Texas and transported to Oklahoma); *United States v. Pierro*, 32 F.3d 611 (1st Cir. 1994) (proceeds from sale of stolen property used as security for bank loan).

— Proceeds from contraband cigarettes: *United States v. Gord*, 77 F.3d 1192 (9th Cir. 1996).

— Arms Import/Export Act: *United States v. Li*, 973 F. Supp. 567 (E.D. Va. 1997).

P. Mail and wire fraud SUA need not affect financial institution:

— *United States v. Real Property (16899 S.W. Greenbrier)*, 774 F. Supp. 1267, 1273 (D. Or. 1991) (all mail and wire fraud offenses are included in section 1956(c)(7)(A) notwithstanding limitation in subsection (c)(7)(D); subsection (c)(7)(A) does not require proof of RICO violation); *United States v. One Tract of Real Property (3400 Swift Drive)*, No. 91-744-CIV-5-BO (E.D.N.C. July 29, 1992) (same); *United States v. Lowder*, 5 F.3d 467 (10th Cir. 1993); *see* Amendment to subsection (c)(7)(D), effective Oct. 28, 1992, striking limitation.

— *United States v. Taylor*, 984 F.2d 298 (9th Cir. 1993) (mail and wire fraud were SUA offenses before 1990 amendment to section 1956(c)(7)(D)).

— *United States v. Hare*, 49 F.3d 447 (8th Cir. 1995) (wire fraud remains SUA under (c)(7)(A) despite 1992 amendment striking section 1343 from (c)(7)(D)).

Q. Food Stamp fraud was SUA before October 1992 amendment:

— *United States v. Puello*, 814 F. Supp. 1155 (E.D.N.Y. 1993) (SUA alleged as violations of sections 641, 1341, and 1343).

R. Bank fraud:

— *United States v. Piervinanzi*, 23 F.3d 670, 676 n.4 (2d Cir. 1994) (section 1344 has been SUA offense since 1986; 1992 amendment only removed redundant reference).

— *See* "merger" cases at pages 28-31 for when money taken from bank becomes SUA proceeds.

S. Bankruptcy fraud:

— *United States v. Ladum*, 141 F.3d 1328 (9th Cir. 1998) (proceeds of bankruptcy fraud include not only business concealed from bankruptcy court, but also income derived from that business).

— *United States v. Chambron*, 1994 WL 645341 (4th Cir. Nov. 16, 1994) (unpublished) (transaction occurring before fraudulent bankruptcy petition was filed involved SUA proceeds, because it involved funds being concealed as part of a fraud that was underway even before the filing of the bankruptcy petition).

— *United States v. McIntosh*, 124 F.3d 1330 (10th Cir. 1997) (money does not become bankruptcy proceeds until defendant has duty to report to bankruptcy trustee and fails to do so), *rev'g* 197 B.R. 688 (Bankr. D. Kan. 1996).

— *United States v. One 1988 Prevost Liberty Motor Home*, 952 F. Supp. 1180 (S.D. Tex. 1996) (where defendant concealed assets from bankruptcy court by transferring them to a corporation, the corporate assets, and proceeds of the sale of those assets, were SUA proceeds).

T. Tax offense:

— *United States v. Miller*, ___ F. Supp. 2d ___, 1998 WL 709469 (N.D.N.Y. Oct. 7, 1998) (tax offense may be charged as wire fraud to make it an SUA).

U. Theft:

— *United States v. Napoli*, 54 F.3d 63 (2d Cir. 1995) (simple theft is not an SUA).

V. Jury instruction:

— *United States v. Miller*, 22 F.3d 1075 (11th Cir. 1994) (instruction that SUA was state gambling instead of federal gambling as charged in the indictment was harmless where jury also convicted defendant of federal gambling offense).

W. Definition of "proceeds" is not unconstitutionally vague:

— *United States v. Gleave*, 786 F. Supp. 258, 270 (W.D.N.Y. 1992); *United States v. Werber*, 787 F. Supp. 353, 358 (S.D.N.Y. 1992).

— *United States v. Griffith*, 85 F.3d 284 (7th Cir. 1996) (making state prostitution offense an SUA through application of section 1961(1) and the Travel Act, while complicated, is not unconstitutionally vague).

VIII. Merger Issue

A. Money laundering statutes apply to transactions occurring after the completion of the underlying criminal activity:

— *United States v. Mankarious*, 151 F.3d 694 (7th Cir. 1998) (the acts that produce the proceeds being laundered must be distinct from the conduct that constitutes money laundering; explaining *Christo* and *Johnson*).

— *United States v. Puig-Infante*, 19 F.3d 929 (5th Cir. 1994) (drug deal is not a transaction involving SUA proceeds because money exchanged for drugs is not proceeds at the time the exchange takes place); *United States v. Gaytan*, 74 F.3d 545 (5th Cir. 1996) (same).

— *United States v. Christo*, 129 F.3d 578 (11th Cir. 1997) (writing NSF funds check as first step in check kiting scheme is not a section 1957 violation because there were no SUA proceeds until the bank on which the check was drawn paid the check; second transaction involving funds paid by defrauded bank is required).

— *United States v. Napoli*, 54 F.3d 63 (2d Cir. 1995) (because proceeds of bank fraud were realized only when fraudulent checks were successfully negotiated at the bank, negotiation of the checks could not be a money laundering offense).

— *United States v. Johnson*, 971 F.2d 562, 569-70 (10th Cir. 1992) (where defendant fraudulently induces victim to wire transfer funds directly to defendant's account, such transfer *does not* constitute money laundering, because funds were not "criminally derived" at the time the transfer took place; but, if transaction had occurred in two steps, with defendant first obtaining money from victim and then making deposit, second step

would be a section 1957 violation).

— *United States v. Piervinanzi*, 23 F.3d 670 (2d Cir. 1994) (the Government concedes that wire transfer out of bank cannot constitute section 1957 violation where defendants were not yet in control of proceeds of SUA offense at the time the transfer was made).

— *United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995) (wire transfer out of bank account constitutes section 1957 violation where defendant had control over the account at the time the transfer was made, even though it was not in his name. distinguishing *Johnson* where defendant did not have control over victim's money until the transfer was complete).

— *United States v. Edgmon*, 952 F.2d 1206 (10th Cir. 1991) (where defendant defrauds lender by selling collateral to third person without lender's knowledge, and then launders proceeds by buying land, the fraud and money laundering are separate offenses).

— *United States v. Lovett*, 964 F.2d 1029 (10th Cir. 1992) (where defendant transports stolen funds across state border in violation of section 2314, subsequent deposit of same funds is section 1957 violation).

— *United States v. Hilliard*, 818 F. Supp. 309 (D. Colo. 1993) (charging both section 1344 offense and section1957 in same indictment is not multiplicitous because section 1957 requires that the bank fraud first occur before an offense under section 1957 can be committed).

B. Property defendant intends to use to commit offense is not "proceeds":

— *United States v. McIntosh*, 124 F.3d 1330 (10th Cir. 1997) (money defendant intends to conceal from bankruptcy trustee is not SUA proceeds before obligation to report to bankruptcy trustee arises).

— *United States v. LaBrunerie*, 914 F. Supp. 340 (W.D. Mo. 1995) (transaction involving clean money intended to be paid as a bribe does not involve proceeds, even though agreement to pay bribe constituted completed offense).

C. Where fraud scheme occurs in several steps, second step may constitute laundering of proceeds of first step, even if overall scheme was not yet complete:

— *United States v. Mankarious*, 151 F.3d 694 (7th Cir. 1998) (for money laundering purposes, the mail fraud offense does not have to be complete; all that matters is that the scheme has produced proceeds in transactions distinct from those constituting money laundering; mail fraud scheme can produce proceeds "long before the mailing ever takes place").

— *United States v. Pretty*, 98 F.3d 1213 (10th Cir. 1996) (act of concealing proceeds of

the scheme is punishable as a money laundering offense even if the transaction simultaneously constitutes a new SUA offense).

— *United States v. Allen*, 76 F.3d 1348 (5th Cir. 1996) (money is proceeds of section 656 offense when it leaves the victim bank and goes to third party, transfer of kickback by third party to defendant is money laundering; *Johnson* distinguished); *United States v. Cihak*, ___ F.3d ___, 1998 WL 99363 (5th Cir. Mar. 9, 1998) (same).

— *United States v. Leahy*, 82 F.3d 624 (5th Cir. 1996) (money is "proceeds" when it is taken from victim and placed in escrow account that defendant controls; subsequent transfer from escrow to defendant's account is section 1957 violation).

— *United States v. Estacio*, 64 F.3d 477 (9th Cir. 1995) (no violation of merger rule where proceeds of earlier phase of check kiting scheme were used to continue the scheme); *but see United States v. Christo*, 129 F.3d 578 (11th Cir. 1997) (distinguishing *Estacio*; if transaction is the first and only step in a check kiting scheme, it does not involve SUA proceeds, because no bank has yet lost any money).

— *United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995) (because mail fraud offense was complete when defendant mailed promotional material to victims and received money in return, subsequent transfer of that money involved SUA proceeds).

— *United States v. Griffith*, 17 F.3d 865 (6th Cir. 1994) (sale of inventory derived from mail/wire fraud offenses to third party is section 1957 violation).

— *United States v. Conley*, 37 F.3d 970 (3d Cir. 1994) (money collected from poker machines was proceeds of one step in gambling offense that was laundered with intent to promote subsequent step).

— *United States v. Massey*, 48 F.3d 1560 (10th Cir. 1995) (property was proceeds of mail fraud scheme at time section 1957 offense took place even though it was obtained from a victim who got a mailing in furtherance of the scheme *after* the section 1957 offense, because the property was the proceeds of an earlier phase of the scheme).

— *United States v. Smith*, 44 F.3d 1259, 1265 (4th Cir. 1995) (wire transfer as second step in scheme constitutes section 1957 offense, even though the transfer is part of the scheme).

— *United States v. Graffia*, 1995 WL 374127 (N.D. Ill. June 21, 1995) (movement of proceeds of wire fraud from one account to another was a section 1957 offense even though the fraud scheme was not complete at that time).

— *General Cigar Co. v. CR Carriers*, 948 F. Supp. 1030 (M.D. Ala. 1996) (civil RICO with money laundering predicates; money laundering transactions do not merge with SUA just because money laundering was part of larger fraud scheme).

— *United States v. Szur*, 1998 WL 132942 (S.D.N.Y. 1998) (following *Allen*; scheme resulted in proceeds when victims paid money to unindicted coconspirator; subsequent payment to defendant was money laundering offense even though it also completed the fraud).

— *See* cases at page 31 where "promotion" of SUA was commission of next step in the scheme and there was no merger problem.

D. Paying for drugs received on consignment:

— *United States v. Martinez*, ___ F.3d ___, 1998 WL 483620 (5th Cir. Aug. 18, 1998) (paying consignor of drugs with money otained from street sales of those drugs is a transaction involving SUA proceeds).

E. Deposit of check is separate transaction:

— *United States v. Kennedy*, 64 F.3d 1465 (10th Cir. 1995) (deposit of checks received from victims was money laundering because the checks were the proceeds of earlier mailings that constituted completed mail fraud offenses).

— *United States v. Sutera*, 933 F.2d 641 (8th Cir. 1991) (defendant received gambling proceeds in the form of a check, subsequent deposit of check constituted money laundering).

— *United States v. Montoya*, 945 F.2d 1068 (9th Cir. 1991) (where defendant receives bribe in the form of a check, subsequent deposit of check is a financial transaction for money laundering purposes).

— *United States v. Cavalier*, 17 F.3d 90 (5th Cir. 1994) (check issued by insurance company is proceeds of insurance fraud; transfer of check by insurer to third party is transaction involving SUA proceeds).

— *United States v. Ruedlinger*, 976 F. Supp. 976 (D. Kan. 1997) (following *Kennedy*. deposit of victims' checks occurred after earlier mailings had already established the mail fraud offense and thus constituted a money laundering offense involving mail fraud proceeds).

— *United States v. Li*, 856 F. Supp. 411 (N.D. Ill. 1994) (receipt of check is distinct from separate transaction of depositing check into a bank account), *aff'd*, 55 F.3d 325 (7th Cir. 1995).

IX. Intent to Promote

A. Reinvesting proceeds in illegal enterprise "promotes" SUA:

— *United States v. Hildebrand*, 152 F.3d 756, 762 (8th Cir. 1998) (payments for office supplies, secretarial services, and staff wages constitute transactions with intent to promote ongoing fraud scheme).

— *United States v. Marbella*, 73 F.3d 1508 (9th Cir. 1996) (using fraud proceeds to pay commissions to persons who brought in more victims promoted SUA).

— *United States v. Olson*, 76 F.3d 393 (10th Cir. 1995) (Table) (using proceeds to pay the business expenses of the company used to promote the scheme, and to pay brokers who brought in new victims, promoted continuation of the scheme).

— *United States v. Baker*, 63 F.3d 1478 (9th Cir. 1995) (paying supplier for more product is transaction conducted with intent to promote).

— *United States v. Jackson*, 935 F.2d 832, 841 (7th Cir. 1991) (buying beepers for use in drug business promotes SUA, but spending proceeds on lavish lifestyle does not).

— *United States v. Munoz-Romo*, 947 F.2d 170 (5th Cir. 1991) (purchase of house in which cash from drug sales will be hidden, and purchase of cars used to drive to sites of drug sales, are transactions that promote SUA); *United States v. Clark*, 67 F.3d 1154 (5th Cir. 1995) (purchase of house from which defendant would run errands in furtherance of drug scheme).

— *United States v. Cruz*, 993 F.2d 164, 167 (8th Cir. 1993) (buying vehicle used to transport marijuana promotes continuation of marijuana business); *United States v. Cisneros*, 112 F.3d 1272(5th Cir. 1997) (same).

— *United States v. Conley*, 37 F.3d 970 (3d Cir. 1994) ("plowing" proceeds of gambling business back into business), *rev'g* 833 F. Supp. 1121 (W.D. Pa. 1993).

— *United States v. Torres*, 53 F.3d 1129 (10th Cir. 1995) (using drug money to buy more drugs promotes SUA, but using it to buy a car does not, unless the Government shows intent in buying car was to promote SUA; evidence that buying car was intended to conceal or disguise is irrelevant where defendant is charged only with section 1956(a)(1)(A)(i), and not (B)(i).

— *United States v. Miller*, ___ F. Supp. 2d ___, 1998 WL 709469 (N.D.N.Y. Oct. 7, 1998) (use of fraud proceeds—money derived from sale of untaxed cigarettes—to buy more cigarettes).

B. Distributing proceeds:

— *United States v. Coscarelli*, 105 F.3d 984, 990 (5th Cir. 1997), *aff'd en banc*, 149 F.3d 342 (5th Cir. 1998) (using proceeds of telemarketing fraud to pay coconspirators and overhead expenses promotes the scheme).

C. Using proceeds to keep scheme going "promotes" SUA:

— *United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995) (money transfers provided defendant with resources to travel and continue contacting victims, thus promoting the fraud scheme).

— *United States v. Cole*, 988 F.2d 681 (7th Cir. 1993) (payment of "interest" to defrauded investors keeps scheme going).

— *United States v. Alford*, 999 F.2d 818 (5th Cir. 1993) (sending checks to a bank account pursuant to agreement to split proceeds of fraud scheme, and using deposits to misrepresent company as successful business enterprise promotes continuation of the fraud scheme).

— *United States v. Restivo*, 8 F.3d 274 (5th Cir. 1993) (using proceeds of fraudulently obtained loan to pay off earlier loan to conceal financial condition of borrower promotes bank fraud).

— *United States v. Brown*, 31 F.3d 484, 487 n.3 (7th Cir. 1994) (recycling proceeds of credit card scheme).

— *United States v. Johnson*, 971 F.2d 562 (10th Cir. 1992) (paying off mortgage on house where defendant maintains the office he uses to perpetrate the fraud allows defendant to keep scheme going).

D. Using proceeds to commit new crime:

— *United States v. Akintobi*, ___ F.3d ___, 1998 WL 734386 (9th Cir. Oct. 22, 1998) (using proceeds of mail theft—stolen NSF checks—to obtain greater credit card balance promotes credit card fraud).

— *United States v. Pierro*, 32 F.3d 611 (1st Cir. 1994) (proceeds from sale of stolen property used as security for bank loan).

E. Using proceeds to commit next step in the scheme:

— *United States v. Wilkinson*, 137 F.3d 214 (4th Cir. 1998) ("when proceeds are used in a transaction to commit the next step in a scheme to defraud, it is clear that the financial transaction advances and furthers the progress of the next step").

— *United States v. Estacio*, 64 F.3d 477 (9th Cir. 1995) (deposit of check drawn on insufficient funds promotes continuation of check kiting scheme).

— *United States v. Dillman*, 15 F.3d 384 (5th Cir. 1994) (using proceeds of false loan to inject lender's own money back into lender to improve lender's apparent financial position).

— *United States v. Morris*, 18 F.3d 562 (8th Cir. 1994) (moving fraudulently obtained loan proceeds to another account to conceal overdraft status promotes continuation of bank fraud scheme).

F. Using proceeds to "lull" prospective fraud victims "promotes" SUA offense:

— *United States v. Ismoila*, 100 F.3d 380 (5th Cir. 1996) (defendant promoted scheme to defraud credit card issuers by depositing credit card receipts into business bank account because it gave appearance that defendant was operating a legitimate business that accepted credit card payments for merchandise).

— *United States v. Hand*, 76 F.3d 393 (10th Cir. 1995) (using proceeds to create "aura of legitimacy" for benefit of victims promotes fraud scheme).

— *United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995) (transferring money to Europe lent "aura of legitimacy" to defendant's fraudulent claim that he was investing victim's money in European investment business).

— *United States v. Johnson*, 971 F.2d 562, 566 (10th Cir. 1992) (using proceeds to pay off mortgage on house and to buy expensive car, where house and car were used to impress prospective victims with defendant's business acumen).

G. Transaction intended to avoid detection:

— *United States v. Allen*, 76 F.3d 1348 (5th Cir. 1996) (actions taken to avoid detection and to lull victims promote the fraud scheme).

— *United States v. Pretty*, 98 F.3d 1213 (10th Cir. 1996) (using proceeds of scheme to buy house from codefendant as means of paying kickback promotes the scheme).

— *United States v. Adams*, 74 F.3d 1093 (11th Cir. 1996) (transaction designed to conceal or disguise fraud proceeds promotes the fraud).

H. Financial transaction may constitute money laundering offense *and* the SUA being promoted:

— *United States v. Wilkinson*, 137 F.3d 214 (4th Cir. 1998) (same transaction may constituent money laundering offense and next step in overall fraud scheme. there is no merger problem with the promotion prong of the offense; distinguishing *Heaps, infra*).

— *United States v. Allen*, 76 F.3d 1348 (5th Cir. 1996) (transaction that completes an essential portion of scheme is conducted with intent to promote, even though a prosecutable crime is already complete at that point).

— *United States v. Estacio*, 64 F.3d 477 (9th Cir. 1995) (financial transaction conducted with intent to promote next step in fraud scheme may be charged as another fraud offense or as a money laundering offense under section 1956(a)(1)(A)(i)).

— *United States v. Piervinanzi*, 23 F.3d 670 (2d Cir. 1994) (wiring money out of bank to an overseas account to commit bank fraud is an act intended to promote the bank fraud of which the wire transfer is a part).

— *United States v. Stein*, 1994 WL 285020 (E.D. La. June 23, 1994) (money laundering transaction may promote fraud scheme of which the transaction is a part).

I. Paying for drugs received on consignment:

— *United States v. Martinez*, ___ F.3d ___, 1998 WL 483620 (5th Cir. Aug. 18, 1998) (paying for drugs received on consignment with proceeds of street sales from same consignment promotes drug trafficking); *United States v. Skinner*, 946 F.2d 176 (2d Cir. 1991) (same).

— *But see United States v. Heaps*, 39 F.3d 479 (4th Cir. 1994) (on same facts, holding that payment for consignment merges with the SUA and therefore does not constitute money laundering).

— *See also United States v. Thomas*, 12 F.3d 1350 (5th Cir. 1994) (paying for drugs with proceeds derived from drug sales).

J. Intent to promote may relate back to the offense that generated the proceeds being laundered:

— *United States v. Montoya*, 945 F.2d 1068 (9th Cir. 1991) (deposit of check that represents proceeds of state bribery offense "promotes" bribery in that it gives defendant use of the fruits of his criminal activity).

— *United States v. Manarite*, 44 F.3d 1407, 1416 (9th Cir. 1995) (intent to promote not limited to "plowing back"; cashing gambling chips promotes "skimming" offense from which chips were derived).

— *United States v. Paramo*, 998 F.2d 1212, 1218 (3d Cir. 1993), *cert. denied*, 510 U.S. 1121 (1994) (converting fraudulently obtained checks into cash promotes underlying fraud scheme by giving defendant access to funds; intent to "plow back" funds into the scheme not required); *United States v. Pelullo*, 961 F. Supp. 736 (D.N.J. 1997) (following *Paramo*; additional financial transactions needed to realize benefit from completed embezzlement).

— *United States v. Cavalier*, 17 F.3d 90 (5th Cir. 1994) (causing insurance company to send check to lienholder to extinguish lien promotes the insurance fraud scheme which was the SUA generating the check).

— *United States v. Nattier*, 127 F.3d 655 (8th Cir. 1997) (following *Cavalier* and *Montoya*; although embezzlement scheme was complete when defendant obtained checks, deposit of checks promoted the scheme by making the money available).

— *United States v. West*, 22 F.3d 586, 587 n.13 (5th Cir. 1994) (money laundering transaction may promote a completed bankruptcy fraud offense).

— *United States v. Haun*, 90 F.3d 1096 (6th Cir. 1996) (cashing or depositing checks derived from fraud scheme promotes both future unlawful acts and "prior unlawful activity").

— *General Cigar Co. v. CR Carriers*, 948 F. Supp. 1030, 1039 (M.D. Ala. 1996) (civil RICO with money laundering predicates) (following *Paramo* and *Manarite*; defendant had to cash checks to receive compensation for his part of the scheme).

— *But see United States v. Heaps*, 39 F.3d 479 (4th Cir. 1994) (distinguishing *Cavalier* and expressly declining to follow *Montoya* and *Paramo*).

K. Offense being promoted need not be a continuing act but may relate to a singular, discreet offense:

— *United States v. Piervinanzi*, 23 F.3d 670 (2d Cir. 1994) (wire transfer promotes singular bank fraud).

L. Offense being promoted can be a foreign tax offense:

— *United States v. Trapilo*, 130 F.3d 547 (2d Cir. 1997) (the "revenue rule" does not bar prosecution of defendant for money laundering with the intent to promote wire fraud, where the scheme is a tax fraud against a foreign government), *rev'g* 1996 WL 743837 (N.D.N.Y. Dec. 20, 1996); *United States v. Miller*, ___ F. Supp. 2d ___, 1998 WL 709469 (N.D.N.Y. Oct. 7, 1998) (following *Trapilo*).

M. Circumstantial evidence of intent to promote:

— *United States v. Narviz-Guerra*, 148 F.3d 530 (5th Cir. 1998) (defendant's intent to purchase ranch for purpose of promoting drug distribution inferred from defendant's knowledge that ranch was allowed to fall into disrepair and was no longer used as a ranch).

— *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (intent to promote inferred where defendant arranged the purchase of the kind of airplane he knew was best suited for drug

smuggling).

— *United States v. Atterson*, 926 F.2d 649, 656 (7th Cir. 1991) (where the defendant is the girlfriend of a drug dealer and wires cash for him, jury is entitled to conclude that she would have known that the purpose of the transaction was to buy more drugs).

— *United States v. Salazar*, 958 F.2d 1285, 1296 (5th Cir. 1992) (where money courier who is member of drug conspiracy carries $77,000 in cash into business providing wire transfer services to Colombia and attempts to hide money on a door ledge when approached by agents, there is circumstantial evidence of courier's intent to promote carrying on of SUA).

— *United States v. Cruz*, 993 F.2d 164, 167 (8th Cir. 1993) (jury entitled to infer intent to promote drug business at time vehicle was purchased from later one-time use of vehicle to transport drugs).

N. Concealment is not an element of subsection (a)(1)(A) offenses:

— *United States v. Haun*, 90 F.3d 1096 (6th Cir. 1996) (cashing and/or depositing checks promotes scheme without concealing or disguising anything).

— *United States v. Baker*, 63 F.3d 1478, 1495 (9th Cir. 1995); *United States v. Jackson*, 935 F.2d at 842; *United States v. Montoya*, 945 F.2d at 1068; *United States v. Skinner*, 946 F.2d at 176.

X. Intent to Evade Taxes

— *United States v. Suba*, 132 F.3d 662 (11th Cir. 1998) (defendant's failure to report three checks on his income tax return is evidence that he laundered them with intent to evade taxes).

— *Note*: Prosecutions under 18 U.S.C. § 1956(a)(1)(A)(ii) require the approval of the Tax Division.

XI. Intent to Conceal or Disguise

A. Distinguishing "promotion" cases:

— *United States v. Ladum*, 141 F.3d 1328 (9th Cir. 1998) (essence of section 1956(a)(1)(B)(i) offense is *concealment* of another crime. *promotion* of another crime is charged under 1956(a)(1)(A); it is no defense that the crime being concealed was

already complete when the money laundering offense occurred).

B. Defendant who is not the perpetrator of the SUA need not intend to conceal or disguise, but need only be aware that perpetrator's intent is to conceal or disguise:

— *United States v. Campbell*, 977 F.2d 854 (4th Cir. 1992) (real estate agent aware that client's purpose is to conceal or disguise drug money).

— *United States v. Carr*, 25 F.3d 1194 (3d Cir. 1994) (money courier aware that principal's purpose is to conceal or disguise).

— *United States v. Wynn*, 61 F.3d 921 (D.C. Cir. 1995) (merchant aware that customer intended to conceal or disguise drug money by buying merchandise).

C. Concealment need not be the only motive in conducting the transaction:

— *United States v. Wynn*, 61 F.3d 921 (D.C. Cir. 1995) (defendant who spends drug proceeds with intent to conceal or disguise may simultaneously intend to enjoy fruits of his illegal activity).

D. Engaging in unusual or convoluted transactions:

— *United States v. Tencer*, 107 F.3d 1120 (5th Cir. 1997) (depositing proceeds in geographically distant accounts, sending proceeds (commingled with untainted funds) to mail drop address, trying to convert account to cash as investigators close in, all indicate intent to conceal, even though defendant used his own name).

— *United States v. Wolny*, 133 F.3d 758 (10th Cir. 1998) (conducting transaction in unusual secrecy—in a hotel room—or in an unusual fashion—carrying $1 million in cash broken down into amounts under $10,000—and using a third party—an Anguillan trust—all indicate intent to conceal or disguise).

— *United States v. Isabel*, 945 F.2d 1193 (1st Cir. 1991) (receiving cash from drug dealer with no legitimate source of income and issuing false payroll check in return).

— *United States v. Cota*, 953 F.2d 753 (2d Cir. 1992) (unusual circumstances of real estate transaction—placing documents in safe deposit box in another bank, receiving $50,000 commission, paying proceeds of sale in two-step transaction—imply knowledge that purpose was to conceal or disguise).

— *United States v. Lovett*, 964 F.2d 1029, 1035-36 (10th Cir.1992) (convoluted financial transactions leading up to purchase of house, combined with misleading statements regarding nature and source of purchase money, establish that when defendant made purchase, he intended to conceal or disguise nature or source of proceeds of ITSP offense).

— *United States v. Beddow*, 957 F.2d 1330, 1335 (6th Cir. 1992) (convoluted transactions and use of a "front man" for sale of emeralds imply intent to disguise ownership and evade transaction reporting requirements).

— *United States v. Campbell*, 977 F.2d 854 (4th Cir. 1992) (real estate agent's knowledge that client was drug dealer, coupled with client's insistence on putting $60,000 cash "under the table" at real estate closing, sufficient to show agent's knowledge of purpose of transaction).

— *United States v. Peery*, 977 F.2d 1230 (8th Cir. 1992) (3-step transaction involving proceeds of theft used to buy personal property evidenced intent to conceal or disguise).

— *United States v. Real Property (16899 S.W. Greenbrier)*, 774 F. Supp. 1267, 1274 (D. Or. 1991) (multi-step transaction implies intent to conceal or disguise).

— *United States v. McLamb*, 985 F.2d 1284 (4th Cir. 1993) (car dealer's advice to buy car with $9,000 cash and three sub-$10,000 cashiers checks indicated knowledge of intent to conceal or disguise in violation of section1956(a)(3)(B)).

— *Hollenback v. United States*, 987 F.2d 1277 (7th Cir. 1993) (irregularly structured transactions calculated to mislead observers as to size of transactions and actual nature of funds demonstrates intent to conceal or disguise nature, location or source of funds. irrelevant that defendant did not also conceal ownership or control).

— *United States v. Garcia-Emanuel*, 14 F.3d 1469 (10th Cir. 1994) (converting cash to CD, using CD as collateral for loan, and making structured deposits before drawing $20,000 check).

— *United States v. Dillman*, 15 F.3d 384 (5th Cir. 1994) (moving proceeds of loan through series of bank accounts to disguise original source of the money).

— *United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995) (transactions involved "so many deposits and subdividings of funds that laundering was the only plausible explanation").

— *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (purchasing airplane with funds in the form of multiple anonymous wire transfers from banks in Panama and bundles of checks drawn on different accounts indicates intent to conceal or disguise source of funds).

— *United States v. Pelullo*, 961 F. Supp. 736(D.N.J. 1997) (unnecessary transactions amid "dizzying array" of wire transfers supported conviction for conceal or disguise).

E. Using third party's name:

— *United States v. Ladum*, 141 F.3d 1328 (9th Cir. 1998) (having tenants pay rent

checks to nominee conceals true ownership of property on which rent is paid).

— *United States v. Suba*, 132 F.3d 662 (11th Cir. 1998) (defendant invested fraud proceeds in securities and real estate through children's trust fund after forging trustee's name).

— *United States v. Nattier*, 127 F.3d 655 (8th Cir. 1997) (placing embezzled funds in account of legitimate real estate business disguised nature and source of SUA proceeds).

— *United States v. Rounsavall*, 115 F.3d 561 (8th Cir. 1997) (depositing drug proceeds in account of fine art business conceals nature of funds).

— *United States v. Ruiz-Castro*, 92 F.3d 1519 (10th Cir. 1996) (receiver of wire transfer would know intent was to conceal or disguise when he saw that sender used wife's name as originator of transfer).

— *United States v. Elder*, 90 F.3d 1110 (6th Cir. 1996) (by directing coconspirators to send money in names other than his own, defendant disguised link between himself and the tainted funds).

— *United States v. Sutera*, 933 F.2d 641 (8th Cir. 1991) (when defendant deposits gambling proceeds into an account held in the name of a restaurant business, rather than a personal account, and pays personal expenses out of the business account, jury could infer that purpose of the deposit was to "hide" the gambling proceeds).

— *United States v. Martin*, 933 F.2d 609 (8th Cir. 1991) (purchase of stock with drug proceeds, with stock certificates put in name of third party instead of purchaser, evidences intent to conceal or disguise).

— *United States v. Beddow*, 957 F.3d 1330 (6th Cir. 1992) (use of "front man").

— *United States v. Garcia-Emanuel*, 14 F.3d 1469 (10th Cir. 1994) (buying land in name of restaurant to make it appear that business is source of wealth. buying truck in wife's name for stated purpose of deceiving the IRS).

— *United States v. Chesney*, 10 F.3d 641 (9th Cir. 1993) (depositing SUA proceeds in one bank account and then moving funds to other accounts in different names).

— *United States v. Willey*, 57 F.3d 1374 (5th Cir. 1995) (transfer of funds between third parties moved money "further away from the defendant that it was before the transfer").

— *United States v. Brown*, 53 F.3d 312 (11th Cir. 1995) (buying cashiers check with third party listed as the remitter).

— *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (use of legitimate corporation as

nominal purchaser of airplane conceals source of purchase money).

— *United States v. One 1988 Prevost Liberty Motor Home*, 952 F. Supp. 1180 (S.D. Tex. 1996) (use of others' bank accounts to make purchase of motorhome shows intent to conceal or disguise disposition of SUA proceeds).

— *But see United States v. Heaps*, 39 F.3d 479 (4th Cir. 1994) (giving instruction to wire money to wife did not evidence intent to conceal or disguise where there was an innocuous reason—convenience—for using wife's name).

F. Registering vehicle in third party's name:

— *United States v. Westbrook*, 119 F.3d 1176 (5th Cir. 1997) (registering vehicle in name of third party who had a job and thus could explain source of purchase money showed intent to conceal or disguise).

— *United States v. Santos*, 20 F.3d 280 (7th Cir. 1994) (third person allowed car to be titled in his name so that drug dealer would not have to show that he used drug proceeds to buy car).

— *United States v. Fields*, 72 F.3d 1200 (5th Cir. 1996) (registering truck purchased with drug proceeds in brother's name indicates intent to conceal or disguise); *United States v. Cisneros*, 112 F.3d 1272(5th Cir. 1997) (same).

— *But see United States v. Baker*, 985 F.2d 1248 (4th Cir. 1993) (evid. insufficient to prove that defendant intended to conceal or disguise drug money by buying boat in third party's name where the Government failed to prove that boat held by third party was same boat that defendant had purchased).

G. Using false name:

— *United States v. Koller*, 956 F.2d 1408 (7th Cir. 1992) (where defendant, in making payment with drug proceeds, gave false first name and incorrect spelling of his last name, jury could infer that his purpose was to conceal or disguise his identity as the owner of the funds).

H. Falsifying nature of the transaction:

— *United States v. Hand*, 76 F.3d 393 (10th Cir. 1995) (misrepresenting transaction as an investment conceals true nature as a transfer of fraud proceeds to the defendant).

— *United States v. Garcia*, 37 F.3d 1359 (9th Cir. 1994) (defendant creates false loan documents purporting to show money was borrowed from third party).

I. Using real estate transaction to conceal or disguise:

— *United States v. Millet*, 123 F.3d 268 (5th Cir. 1997) (defendant engages in real estate transaction in order to receive his share of bribe money he directed to be paid to third party).

J. Sending property abroad:

— *United States v. Cihak*, ___ F.3d ___, 1998 WL 99363 (5th Cir. 1998) (defendant's apparent hurry to liquidate accounts and transfer them out o the country sufficient to show intent to conceal source and location).

— *United States v. Massac*, 867 F.2d 174 (3d Cir. 1989) (known drug dealer sends $22,000 in cash through cash transmitting business to Haiti over five month period).

K. Converting proceeds to goods and services:

— *United States v. Norman*, 143 F.3d 375 (8th Cir. 1998) (purchase of car may not have concealed defendant's identity but it did conceal what happened to the SUA proceeds. converting the money from one form to another—bank deposit to consumer goods—may constitute violation of section 1956(a)(1)(B)(i)).

— *United States v. Heater*, 63 F.3d 311 (4th Cir. 1995) (use of large quantities of cash to buy vehicles and real property, using third-party names and addresses, showed intent to conceal or disguise drug proceeds by purchasing merchandise); *United States v. Misher*, 99 F.3d 664 (5th Cir. 1996) (same; buying car with cash); *United States v. Cisneros*, 112 F.3d 1272 (5th Cir. 1997) (same).

— *United States v. Wynn*, 61 F.3d 921 (D.C. Cir. 1995) (drug dealer who spent hundreds of thousands of dollars on expensive clothes with cooperation of merchant who recorded sales in false names intended to conceal or disguise drug money buy converting it to goods).

— *United States v. Jackson*, 935 F.2d 832, 841 (7th Cir. 1991) (spending drug proceeds to pay rent and buy consumer goods was designed to conceal or disguise source of money; "conversion of cash into goods and services as a way of concealing the wellspring of the cash is a central concern of the money laundering statute").

— *United States v. Lovett*, 964 F.2d 1029 (10th Cir. 1992) (purchase of truck for brother to keep brother quiet about theft from grandmother conceals source of proceeds; "the statute is aimed broadly at transactions designed in whole or in part to conceal or disguise *in any manner* the nature, location, source, ownership or control of the proceeds of unlawful activity"); *United States v. Garcia-Emanuel*, 14 F.3d 1469 (10th Cir. 1994).

L. Converting proceeds to cash:

— *United States v. Hairston*, 46 F.3d 361 (4th Cir. 1995) (where defendant, in order to give his operation the semblance of legitimacy, insists that extortion proceeds be paid by check to a charitable entity, cashing the check constitutes concealing and disguising the nature of the proceeds).

M. Investing proceeds:

— *United States v. Saget*, 991 F.2d 702 (11th Cir. 1993) (investing drug proceeds in night club, claiming that funds are gambling winnings, establishes intent to conceal or disguise).

N. Commingling funds:

— *United States v. Jackson*, 935 F.2d 832, 841 (7th Cir. 1991) (commingling drug proceeds with legitimate funds in church bank account showed intent to conceal or disguise).

— *United States v. Griffith*, 85 F.3d 284 (7th Cir. 1996) (commingling funds from legitimate and illegal businesses and funneling proceeds of illegal activities through legitimate financial channels shows intent to conceal).

— *United States v. Posters 'N' Things Ltd.*, 969 F.2d 652, 661 (8th Cir. 1992), *aff'd on other grounds*, 511 U.S. 513 (1994) (jury entitled to find intent to conceal or disguise where defendant commingled receipts from sale of drug paraphernalia with receipts from legitimate business in common account); *United States v. Termini*, 992 F.2d 879 (8th Cir. 1993) (same; gambling receipts).

— *United States v. Flynt*, 15 F.3d 1002 (11th Cir. 1994) (concealing extortion checks in wife's business account).

— *United States v. Rutgard*, 108 F.3d 1041(9th Cir. 1997) (dicta) (depositing criminally-derived cash with innocently derived funds can show intent to conceal or disguise identity of tainted money).

O. The Government need not show intent was to conceal or disguise *identity*; concealing nature or source is sufficient:

— *United States v. Nattier*, 127 F.3d 655 (8th Cir. 1997) (defendant's used their own names but disguised nature and source of embezzled funds by placing them in account of legitimate real estate business).

— *United States v. Manarite*, 44 F.3d 1407 (9th Cir. 1995) (defendant did not conceal his identity, but attempted to conceal fact that gambling chips had been skimmed from blackjack tables).

— *United States v. Starke*, 62 F.3d 1374 (11th Cir. 1995); *United States v. Sax*, 39 F.3d 1380, 1389 n.6 (7th Cir. 1994); *United States v. Lovett*, 964 F.2d 1029, 1034 (10th Cir.), *cert. denied*, 506 U.S. 857 (1992).

— *United States v. Szur*, 1998 WL 661484 (S.D.N.Y. 1998) (defendant's request that his share of fraud proceeds be sent to account not associated with his employer conceals "nature" of payment—*i.e.* that it was compensation for his role in defrauding employer's customers; unimportant that defendant did not conceal his identity or association with the account to which the payment was made).

P. *Sanders* and cases following *Sanders*:

— *United States v. Sanders*, 929 F.2d 1466 (10th Cir. 1991) (buying a car in own name or daughter's name with drug proceeds is *not* violation of (a)(1)(B)(i); section 1956 is not a "money spending" statute).

— *United States v. Shoff*, 151 F.3d 889 (8th Cir. 1998) (same. buying car in own name with fraud proceeds, where there was no commingling with clean funds, shows no intent to conceal. underlying fraud does not automatically supply the concealment element of money laundering).

— *United States v. Lovett*, 964 F.2d 1029 (10th Cir. 1992) (same; statements creating false impression that purchase money came from siding business not sufficient to show purpose to conceal or disguise where car purchased openly in own name).

— *United States v. Garcia-Emanuel*, 14 F.3d 1469 (10th Cir. 1994) (simply buying horse and watch with drug proceeds and using drug proceeds to make mortgage payments *insufficient* to show intent to conceal or disguise).

— *United States v. Dobbs*, 63 F.3d 391 (5th Cir. 1995) (where SUA proceeds were deposited in wife's bank account and used for family expenses, there was *insufficient* evidence of intent to conceal or disguise).

— *United States v. Rockelman*, 49 F.3d 418, 422 (8th Cir. 1995) (defendant purchased cabin with cash and titled it in name of business, but made no attempt to hide wither his identity or the source of the funds).

Q. Cases distinguishing *Sanders*:

— *United States v. Nattier*, 127 F.3d 655 (8th Cir. 1997) (distinguishing *Rockelman*; defendant did not simply spend SUA proceeds, but first deposited money in account of legitimate business to disguise nature and source).

— *United States v. Contreras*, 108 F.3d 1255 (10th Cir. 1997) (buying car with bank check that contains no information identifying source of funds is sufficient evidence of

intent to conceal or disguise).

— *United States v. Wilson*, 77 F.3d 105 (5th Cir. 1996) (defendant did not conceal identity but gave false statement as to source of funds used to buy house and boat; distinguishing *Sanders*).

— *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (buying car in third party's name and other circumstantial evidence indicate intent to conceal or disguise; limiting *Sanders* to situation where there is a familial relationship and other actions that serve to identify the true owner).

— *United States v. Long*, 977 F.2d 1264, 1270 (8th Cir. 1992) (purchase of cars with false credit application was intended to make drug money appear to be earned through legitimate employment).

— *United States v. Edgmon*, 952 F.2d 1206 (10th Cir. 1991), *cert. denied*, 505 U.S. 1223 (1992) (defendant has proceeds of fraud paid to father who uses proceeds to buy land in own name, borrow money against land, and return proceeds of new loan to defendant. distinguishing *Sanders*).

— *United States v. One 1987 Mercedes Benz 300E*, 820 F. Supp. 248 (E.D. Va. 1993) (purchase of car with check drawn on account into which extortion proceeds had previously been deposited).

— *United States v. Fields*, 72 F.3d 1200 (5th Cir. 1996) (truck purchased in brother's name with drug proceeds indicates intent to conceal or disguise).

R. Transaction that, by itself, conceals nothing, satisfies conceal or disguise requirement if it is part of a larger scheme:

— *United States v. Trost*, 152 F.3d 715 (7th Cir. 1998) (public official guilty of concealing and disguising embezzled funds by moving them through personal bank accounts, even though the accounts were in his own name. use of official-looking accounts was part of overall embezzlement scheme).

— *United States v. Kneeland*, 148 F.3d 6 (1st Cir. 1998) (defendant's transfer of funds through series of bank and brokerage accounts, while creating a paper trail that agents could follow, nevertheless was so complex that it indicated an intent to conceal or disguise).

— *United States v. Wilkinson*, 137 F.3d 214 (4th Cir. 1998) (defendant transferred funds knowing that the recipient would "doctor the books" to conceal the source of the money).

— *United States v. Pipkin*, 114 F.3d 528 (5th Cir. 1997) (purchase of cashiers check in

own name concealed nothing, but it was part of a series of convoluted transactions, involving third party names, that resulted in purchase of defendant's house. therefore there was intent to conceal or disguise when check was purchased).

— *United States v. Rounsavall*, 115 F.3d 561 (8th Cir. 1997) (intent to conceal or disguise, which was evident when defendant deposited SUA proceeds in account of fine art business, continues when defendant uses art business account to buy, and later sell, real property in defendant's own name); *but see United States v. Shoff*, 151 F.3d 889 (8th Cir. 1998) (underlying fraud does not automatically supply concealment element).

— *United States v. Willey*, 57 F.3d 1374 (5th Cir. 1995) (transaction between two third parties, that ostensibly concealed nothing, violated section 1956(a)(1)(B)(i) if it was part of a larger scheme to conceal defendant's connection to SUA proceeds).

— *United States v. Carter*, 966 F. Supp. 336(E.D. Pa. 1997) (rent check in defendant's own name was part of larger scheme to create "front" business for money launderer).

S. Evidence that supports underlying fraud SUA may also establish intent to conceal or disguise:

— *United States v. Ismoila*, 100 F.3d 380 (5th Cir. 1996) (transfers between bank accounts were part of overall scheme to defraud credit card issuers in that proceeds generated by one phony business were deposited in the account of another business).

— *United States v. Marx*, 991 F.2d 1369 (8th Cir. 1993) (obtaining loan in third party's name, which constitutes fraud offense under section 656, also evidences intent to disguise the control of the proceeds in violation of section 1956(a)(1)(B)(i)).

— *United States v. Alford*, 999 F.2d 818 (5th Cir. 1993) (sending proceeds of earlier stage in fraud scheme to bank account in support of false invoices conceals or disguises proceeds of scheme).

T. Evidence that supports knowledge element may also establish knowledge of intent to conceal or disguise:

— *United States v. Wynn*, 61 F.3d 921 (D.C. Cir. 1995) (merchant's knowledge of customer's intent to conceal or disguise drug proceeds, and his knowledge that the funds were illegally derived, established by the same circumstantial evidence).

U. Simple transportation or transmission of proceeds does not satisfy conceal or disguise requirement:

— *United States v. Ramming*, 915 F. Supp. 854 (S.D. Tex. 1996) (where defendants left a "clean paper trail so well defined that the regulators could follow it," and there were no unusual or convoluted transactions, there was insufficient evidence of intent to conceal or disguise).

— *United States v. Herron*, 97 F.3d 234, 237 (8th Cir. 1996) (defendant's use of Western Union to transfer funds cannot by itself satisfy the concealment element of the offense).

— *United States v. Gonzalez-Rodriguez*, 966 F.2d 918, 926 (5th Cir. 1992) (drug courier arrested in airport carrying $8,000 in drug proceeds cannot be convicted under section 1956(a)(1)(B)(i) where courier did not try to hide money when confronted by agents).

— *United States v. Garcia-Emanuel*, 14 F.3d 1469 (10th Cir. 1994) (simple wire transfer of proceeds to Colombia evidences no intent to conceal or disguise absent expert testimony regarding practices of drug dealers).

— *United States v. Dimeck*, 24 F.3d 1239 (10th Cir. 1994) (covert nature of transportation of funds from one state to another not sufficient to imply intent to conceal or disguise, *rev'g* 815 F. Supp. 1425, on this point).

V. The Government need not prove defendant knew purpose was to conceal or disguise *SUA proceeds*:

— *United States v. Maher*, 108 F.3d 1513 (2d Cir. 1997) (reference to "specified unlawful activity" in the conceal or disguise clause was not intended to override the general rule that the defendant need not know what form of unlawful activity generated the proceeds he is concealing).

— *United States v. Campbell*, 977 F.2d 854 (4th Cir. 1992) (despite language in statute requiring proof that purpose was to conceal or disguise proceeds of *specified* unlawful activity, "[G]overnment need only show knowledge that the funds represented 'the proceeds of *some form* of unlawful activity.'"), *rev'g United States v. Campbell*, 777 F. Supp. 1259 (W.D.N.C. 1991), on this point.

— *But see United States v. Long*, 977 F.2d 1264, 1270 (8th Cir. 1992) (assuming without deciding that Government must prove knowledge of intent to conceal *drug* proceeds).

— *United States v. Carr*, 25 F.3d 1194 (3d Cir. 1994) (following *Campbell*; statute requires only that defendant knew his act was designed to conceal or disguise); *but see id.* (Becker, J., dissenting).

XII. Intent to Evade Reporting Requirements

A. No willfulness requirement:

— *United States v. Santos*, 20 F.3d 280 (7th Cir. 1994) (defendant need not know that

structuring is illegal; *Ratzlaf* inapplicable); *United States v. Nelson*, 66 F.3d 1036 (9th Cir. 1995) (same).

— *United States v. Palacios*, 1995 WL 328390 (5th Cir. June 1, 1995) (same).

B. Evidence sufficient to sustain section 1956(a)(1)(B)(ii) conviction:

— *United States v. Morales*, 108 F.3d 1213 (10th Cir. 1997) (purchase of bar with 50 payments each under $10,000 violated section 1956(a)(1)(B)(ii)).

— *United States v. Griffin*, 84 F.3d 912 (7th Cir. 1996) (converting $99,810 in drug proceeds to cashiers checks in amounts under $10,000 is a violation of subparagraph (B)(ii)).

— *United States v. Walcott*, 61 F.3d 635 (8th Cir. 1995) (splitting Western Union wire transfers to same person, under different aliases, on consecutive days shows intent to evade).

— *United States v. Nelson*, 66 F.3d 1036 (9th Cir. 1995) (car dealer's suggestion that customer buy another car to trade in to avoid paying more than $10,000 cash for new car shows intent to evade Form 8300).

— *United States v. Gilliam*, 975 F.2d 1050 (4th Cir. 1992).

C. Purchase of cashiers checks to evade Form 8300 requirement is violation of section 1956(a)(1)(B)(ii):

— *United States v. Patino-Rojas*, 974 F.2d 94 (8th Cir. 1992) (defendant buys two cashiers checks in amounts under $10,000, evading CTR requirement, and uses checks to buy boat, evading Form 8300).

— *United States v. Jackson*, 983 F.2d 757 (7th Cir. 1993) (defendant buys car with $8,000 cash and five cashiers checks all purchased on same day).

XIII. Transportation Offenses under Section 1956(a)(2)

A. Knowledge requirements:

— *United States v. Carr*, 25 F.3d 1194 (3d Cir. 1994) (definition of "knowledge" in section1956(c)(1) is applicable to section 1956(a)(2) offenses; defendant need not know what form of unlawful activity produced proceeds being laundered).

— Defendant had requisite knowledge if he *believed* sting money was proceeds of unlawful

activity; *United States v. Carr*, 25 F.3d 1194 (3d Cir. 1994) (transaction occurred before 1990 amendment adding sting provision to section 1956(a)(2)).

B. Section 1956(a)(2)(A) does not require proof that property was proceeds of SUA:

— *United States v. Piervinanzi*, 23 F.3d 670 (2d Cir. 1994) (because subsection (a)(2)(A) contains no proceeds requirement, there is no "merger" problem when the defendant wires money out of the United States to promote fraud against bank, and the wire transfer constitutes both the money laundering offense and the bank fraud).

— *United States v. Hamilton*, 931 F.2d 1046, 1052 (5th Cir. 1991) (dicta) (foreign drug cartel could violate subsection (a)(2)(A) by sending proceeds of legitimate business into the United States for purpose of providing necessary capital for expansion of drug business in the United States).

— *See United States v. Li*, 973 F. Supp. 567(E.D. Va. 1997) (money wire transferred into the United States for purpose of violating Arms Import/Export Act).

C. Whether section 1956(a)(2)(B)(i) requires proof that property is SUA proceeds is unclear:

— Section 1956(a)(2) does not contain an SUA requirement, but subparagraph (B)(i) requires proof that the defendant knew the purpose of the transaction was to conceal or disguise SUA proceeds. Conceivably, one could violate section 1956(a)(2)(B)(i) by sending property that was not SUA proceeds abroad, if the purpose was to conceal or disguise SUA proceeds involved in a parallel transaction; *e.g.*, money broker puts SUA proceeds in account A, sends non-SUA proceeds abroad from account B.

— *But see United States v. Cihak*, ___ F.3d ___, 1998 WL 99363 (5th Cir. 1998) (*dicta* stating that subsections (a)(1) and (a)(2) both require proof that the property was SUA proceeds).

D. Transports, transmits, or transfers:

— *United States v. Piervinanzi*, 23 F.3d 670 (2d Cir. 1994) ("Transportation" included wire transfers of funds even before 1988 amendment);*United States v. Monroe*, 943 F.2d 1007 (9th Cir. 1991); *United States v. Stein*, 1994 WL 285020 (E.D. La. June 23, 1994).

E. Each transfer is a separate offense; a series of transfers does not constitute a continuing offense:

— *United States v. Kramer*, 73 F.3d 1067 (11th Cir. 1996) (to be convicted of an offense under subsection (a)(2), defendant must be involved in a transfer that begins or ends in the United States; conviction reversed where jury found defendant had moved funds from Switzerland to Luxembourg but was not involved in earlier movement of the same funds from the United States to Switzerland).

F. Transfer may occur in multiple steps:

— *United States v. Harris*, 79 F.3d 223 (2d Cir. 1996) (movement of funds from New York to Connecticut and then from Connecticut to Switzerland was all one transfer; that the intent to conceal or disguise applied only to the domestic portion of the transfer does not preclude conviction under section 1956(a)(2)(B)(i)).

G. Intent to promote:

— *United States v. Narviz-Guerra*, 148 F.3d 530 (5th Cir. 1998) (sending money from Mexico to the United States to buy a ranch to be used for marijuana distribution constitute section 1956(a)(2)(A) violation).

— *United States v. Lee*, 937 F.2d 1388, 1396-97 (9th Cir. 1991) (transfer of monetary instruments from the United States to China promotes smuggling of fish in violation of section 545 and Lacey Act); *United States v. Monroe*, 943 F.2d 1007 (9th Cir. 1991) (wire transfer to Hong Kong to pay for marijuana shipment).

H. Conceal or disguise:

— *United States v. Carr*, 25 F.3d 1194 (3d Cir. 1994) (circumstantial evidence that defendant knew purpose of transportation was to conceal or disguise included possession of undisclosed cash and lies told to Customs officer).

— *United States v. Harris*, 805 F. Supp. 166, 175 n.1 (S.D.N.Y. 1992) (sending proceeds of section 1344 bank fraud abroad).

— *See* "conceal or disguise" cases involving sending money abroad at page 42.

I. Conspiracy:

— *United States v. Carr*, 25 F.3d 1194 (3d Cir. 1994) (large amount of money wired to Colombia by defendant with limited income demonstrates defendant's participation in conspiracy to commit section 1956(a)(2) offense).

XIV. Sting Cases: 18 U.S.C. §1956(a)(3)

The sting statute was added to section 1956 in 1988 because it is not an offense to launder sting money under section 1956(a)(1); the legislative history of the sting statute appears at 134 Cong. Rec. S17366 (daily ed. Nov. 10, 1988) (statement of Sen. Biden).

A. Financial transaction:

— *United States v. Leslie*, 103 F.3d 1093 (2d Cir. 1997) (exchange of cash represented to be drug proceeds for check drawn on defendant's account is a financial transaction).

— *United States v. Dimeck,* 815 F. Supp. 1425 (D. Kan. 1993) (defendant may be convicted of sting offense even though government agent substituted plain paper in bag represented to contain currency), *rev'd on other grounds*, 24 F.3d 1239 (10th Cir. 1994).

B. Intent to promote:

— *United States v. Santos*, 20 F.3d 280 (7th Cir. 1994) (wiring money for undercover to supposed "drug runner").

C. Intent to conceal or disguise:

— *United States v. Wolny*, 133 F.3d 758 (10th Cir. 1998) ("conceal or disguise" means the same thing undersubsection (a)(3)(B) as it does for (a)(1)(B) insofar as what evidence is probative of intent is concerned).

— *United States v. Phipps*, 81 F.3d 1056 (11th Cir. 1996) (structuring is a violation of section 1956(a)(3)(B). no discussion).

D. Representation:

The representation that the money is SUA proceeds takes the place of the "knowledge" and "proceeds" elements of section 1956(a)(1).

— *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (there is sufficient evidence of representation if law enforcement officer makes defendant "aware of circumstances from which a reasonable person would infer that the property was drug proceeds"); *United States v. Castaneda-Cantu*, 20 F.3d 1325 (5th Cir. 1994); *United States v. Starke*, 62 F.3d 1374 (11th Cir. 1995).

— *United States v. McLamb*, 985 F.2d 1284 (4th Cir. 1993) (representation made to car dealer sufficient where "any person of ordinary intelligence would have recognized it").

— *United States v. Wydermyer*, 51 F.3d 319 (2d Cir. 1995) (statement that funds to be laundered came from sale of arms smuggled into the country was sufficient to represent that property was the proceeds of a violation of the Arms Export Control Act).

— *United States v. Arditti*, 955 F.2d 231 (5th Cir. 1992) (agent need not repeat representation with respect to each transaction); *United States v. Castaneda-Cantu*, 20 F.3d 1325 (5th Cir. 1994) (same).

— *United States v. Breque*, 964 F.2d 381 (5th Cir. 1992) (agent's ambiguous statements are sufficient if defendant's responses reveal understanding that the currency came from drug trafficking activity); *United States v. Nelson*, 66 F.3d 1036 (9th Cir. 1995) (same).

— *United States v. Jensen*, 69 F.3d 906 (8th Cir. 1995) (representation may be implied).

— *United States v. Fuller*, 974 F.2d 1474 (5th Cir. 1992) (recorded conversation in which agent describes consequences from "Colombians" if money is lost sufficient to establish necessary representation; deliberate ignorance may satisfy knowledge requirement).

— *United States v. Leslie*, 103 F.3d 1093 (2d Cir. 1997) (statement that cash was "powder-type money" that should not be brought over the border was sufficient).

Agent must describe the circumstances from which the proceeds were allegedly derived with sufficient detail to convey that all elements of the underlying offense were satisfied:

— *United States v. Manarite*, 44 F.3d 1407 (9th Cir. 1995) (representation that gambling chips were skimmed was sufficient to describes elements of state gambling offense of taking something of value from a game in progress).

E. Repeating the representation to each codefendant:

— Legislative history suggests that the representation need not be repeated to each codefendant who joins the scheme:

"The defendant would not have to know or believe that the property involved in the financial transaction was drug money. It would be sufficient that a law enforcement officer had represented it as such; while this would mean that everyone involved in the financial transaction would be guilty of this offense whether he was aware of the law enforcement officer's representation or not, the strengthened specific intent requirement would guard against innocent persons being prosecuted." 134 Cong. Rec. S17366 (daily ed. Nov. 10, 1988) (statement of Sen. Biden).

F. Entrapment:

— *United States v. Spriggs*, 102 F.3d 1245 (D.C. Cir. 1996) (no entrapment where the Government persuaded jury that car salesmen were predisposed to sell cars to drug dealers).

— *United States v. Aliotta*, 1998 WL 43015 (S.D.N.Y. 1998) (fact that defendant "jumped at the chance" to launder money shows predisposition and negates entrapment defense).

— *United States v. Twersky*, 1994 WL 319367 at *6 n.2 (S.D.N.Y. June 29, 1994) (sting statute does not constitute entrapment *per se*).

— *United States v. Arditti*, 955 F.2d 231 (5th Cir. 1992) (predisposition may be established circumstantially by evidence of defendant's conduct after he is involved with the undercover agent; defendant quickly became "an eager and active participant" who, when opportunity was presented, "jumped in with both feet").

— *United States v. Hollingsworth*, 27 F.3d 1196 (7th Cir. 1994) (*en banc*) (the Government must not only prove defendant was willing to commit the crime, but also that he had the means to commit it and lacked only the opportunity; where the Government provides the means to commit money laundering to a person who otherwise was incapable of committing the offense notwithstanding his willingness, entrapment is a valid defense).

— *United States v. Brace*, 145 F.3d 247 (5th Cir. 1998) (*en banc*), vacating 112 F.3d 802 (5th Cir. 1997) and affirming the conviction (panel erred in following *Hollingsworth*; lack of "positional predisposition" was not raised at trial and therefore could not be raised on appeal. pastor of church, who was willing to launder money for undercover agents, but lacked expertise and ability to do so, was predisposed and therefore not entrapped).

G. Outrageous conduct:

— *United States v. Jensen*, 69 F.3d 906 (8th Cir. 1995) (pursuing sting case even after there is sufficient evidence to convict the defendant on other charges is not outrageous and does not violate due process; an agent does not violate the law when he makes false statements to the target of a sting).

— *United States v. Payne*, 962 F.2d 1228 (6th Cir. 1992) (undercover sting does not "shock the conscience"); *United States v. Foster*, 835 F. Supp. 360 (E.D. Mich. 1993) (same).

— *United States v. Wydermyer*, 51 F.3d 319 (2d Cir. 1995) (defendant may raise entrapment defense if he thinks sting statute was applied unfairly, but there is no basis for contention that section 1956(a)(3) does not apply to first offenders).

— *United States v. Carter*, 966 F. Supp. 336(E.D. Pa. 1997) (claim of outrageous conduct during sting investigation must be raised in pretrial motion to dismiss, not in post-trial Rule 29 motion); *id.* (interference with attorney-client relationship could constitute outrageous conduct, but defendant failed to show any privileged communication was affected).

— *United States v. Nolan-Cooper*, ___ F.3d ___, 1998 WL 554207 (3d Cir. Sept. 2, 1998) (outrageous misconduct by undercover agent may require dismissal of money

laundering indictment, but one-time sexual encounter between agent and target that served no investigative purpose and occurred near the end of the investigation did not require dismissal).

H. Buy/Bust cases:

— *United States v. Calva*, 979 F.2d 119 (8th Cir. 1992) (ordinary buy/bust case may be converted into money laundering offense under section 1956(a)(3) if the undercover represents purchase money as proceeds of earlier drug offense).

I. Belief:

— *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (in section 1956(a)(3)(B) case, the Government must prove that defendant believed agent's representation to be true); *United States v. Castaneda-Cantu*, 20 F.3d 1325 (5th Cir. 1994); *United States v. Leslie*, 103 F.3d 1093 (2d Cir. 1997).

— *Castaneda-Cantu, supra* (defendant's inquiries about guns and drugs, and peculiar circumstances of the transactions—the same circumstances that evidence an intent to conceal or disguise—support jury's determination that defendant believed the representation).

— *Leslie, supra* (representation that cash was "powder-type money" and defendant's subsequent actions were sufficient to allow jury to infer defendant believed representation to be true).

— *United States v. Starke*, 62 F.3d 1374 (11th Cir. 1995) (defendant's behavior and interaction with agents supports jury's finding on the "belief" element).

— *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (jury's determination that defendant believed representation, when supported by circumstantial evidence, should be given great weight and not disturbed on appeal).

— *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (belief may not be shown by willful blindness. contrasting "belief" with "knowledge").

— *United States v. Aliotta*, 1998 WL 43015 (S.D.N.Y. 1998) (*mens rea* for section 1956(a)(3)(B) satisfied by "conscious avoidance" of learning the true nature of funds agent or informant obliquely represented to be criminal proceeds).

— *United States v. Palazzolo*, 1995 WL 764416 (6th Cir. Dec. 26, 1995) (unpublished) (defendant must "believe" that property is proceeds of a specific SUA offense; it is not sufficient that he believe it is the proceeds of criminal activity generally).

— *United States v. Manarite*, 44 F.3d 1407, 1415 n.10 (9th Cir. 1995) (dicta) (belief not

required in section 1956(a)(3)(A) case).

— *See* cases discussing jury instructions on "belief" element at page 73.

J. Specific intent:

— *United States v. Breque*, 964 F.2d 381 (5th Cir. 1992) (defendant may be convicted of failing to file CTR under Title 31 *and* laundering of sting money with intent to violate CTR requirement under section 1956(a)(3)(C)).

— *United States v. Santos*, 20 F.3d 280 (7th Cir. 1994) (there is no willfulness requirement in section 1956(a)(3); *Ratzlaf* distinguished).

K. Recovery of sting money:

— *United States v. Khawaja*, 118 F.3d 1454 (11th Cir. 1997) (money the Government gave defendant to launder as "sting" money not recoverable as restitution under VWPA, 18 U.S.C. § 3663).

XV. Section 1957

A. Purpose of the statute:

— *United States v. Rutgard*, 108 F.3d 1041 (9th Cir. 1997) (section1957 is designed to freeze criminal proceeds out of the banking system).

— *United States v. Allen*, 129 F.3d 1159 (10th Cir. 1997) (Congress' primary concern in enacting section 1957 may have been with third parties who give criminals opportunity to spend ill-gotten gains, but the statute nevertheless reaches conduct of wrongdoers who conduct transactions with fruits of their own criminal acts).

— *United States v. Johnson*, 971 F.2d 562, 568 (10th Cir. 1992) (the statute criminalizes the actions of third parties who have aided drug dealers by allowing them to dispose of drug proceeds, but whose conduct is not covered by conspiracy law).

B. "Criminally-derived property":

— *United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995) ("criminally-derived property" means same thing as "proceeds" under section 1956).

C. $10,000 requirement:

— *United States v. Rutgard*, 108 F.3d 1041(9th Cir. 1997) (withdrawal of commingled

money does not meet $10,000 threshold if the remaining balance exceeds the amount of the tainted funds. dirty money is presumed to be "last out"; section 1956 case law, holding that the transaction need only "involve" criminal proceeds, is not applicable to section 1957).

— *United States v. Adams*, 74 F.3d 1093, 1101 (11th Cir. 1996) (at least $10,000 of the property involved in the monetary transaction must be traceable to SUA proceeds).

— *United States v. Mills*, 1996 WL 634207 (S.D. Ga. May 1, 1996) (transaction must include at least $10,000 of dirty money (following *Adams*); the Government may not presume that transaction involves $10,000, even if more than $10,000 in dirty money was deposited into an account, if the ratio of clean to dirty money in the account is 800:1).

— *But see United States v. Johnson*, 971 F.2d 562, 570 (10th Cir. 1992) (in the context of a withdrawal, the Government is not required to prove that no untainted funds were commingled with the unlawful proceeds for section 1957 purposes).

— *United States v. Sokolow*, 81 F.3d 397 (3d Cir. 1996) (where $20,000 in dirty money was commingled, the Government was not required to trace to prove that all money involved in the transaction was dirty; following *Johnson*).

— *United States v. Wilkinson*, 137 F.3d 214 (4th Cir. 1998) (section1956 case stating, in *dicta*, that rule allowing the Government to presume that any withdrawal from commingled account involves SUA proceeds, up to the amount of the proceeds originally deposited into the account, applies to section 1957 cases under *United States v. Moore*, 27 F.3d 969, 976 (4th Cir. 1994).

D. Aggregating transactions to reach $10,000:

— *United States v. Brown*, 1998 WL 166423 (4th Cir. 1998) (unpublished) (whether purchase of several automobiles on same day from same vendor constituted single monetary transaction exceeding $10,000 was question for jury).

E. Interstate commerce:

— *United States v. Allen*, 129 F.3d 1159 (10th Cir. 1997) (withdrawing SUA proceeds as cashiers checks and sending them out of state to be deposited affected interstate commerce).

— *United States v. Aramony*, 88 F.3d 1369 (4th Cir. 1996) (reversing section 1957 conviction because jury instruction allowed jury to convict without finding that transaction actually affected interstate commerce).

— *See* section 1956 cases at page 7.

F. Simply spending proceeds violates section 1957:

— *United States v. Hawkey*, 148 F.3d 920 (8th Cir. 1998) (use of funds misappropriated from charitable organization to buy vehicles for personal use constituted section 1957 violation).

— *United States v. Allen*, 129 F.3d 1159 (10th Cir. 1997) (section 1957 proscribes a wider range of conduct than section 1956; it contains no conceal or disguise element and thus applies to the most open, above-board transactions).

— *United States v. Wynn*, 61 F.3d 921 (D.C. Cir. 1995) (section 1957 offense is easier to prove than section 1956 because it lacks specific intent element).

— *United States v. Kelley*, 929 F.2d 582, 585 (10th Cir. 1991) (defendant uses proceeds of fraudulently obtained loan to buy car); *United States v. Taylor*, 984 F.2d 298 (9th Cir. 1993) (defendant pleads guilty to spending proceeds of wire fraud).

— *United States v. Cole*, 988 F.2d 681 (7th Cir. 1993) (withdrawals from account containing proceeds of investment fraud scheme for personal expenses exceeding $10,000).

— *United States v. One 1987 Mercedes Benz 300E*, 820 F. Supp. 248 (E.D. Va. 1993) (purchase of car with check drawn on account into which extortion proceeds had previously been deposited).

— *United States v. Ferrouillet*, 1996 WL 684461 (E.D. La. Nov. 26, 1996) (section1957 is a money spending statute; distinguishing section 1956 cases where Government failed to prove intent to conceal or disguise), *aff'd sub nom. United States v. Hemmingson*, ___ F.3d ___, 1998 WL 671376 (5th Cir. Sept. 30, 1998).

G. Wire transfer of proceeds:

— *United States v. O'Brien*, 836 F. Supp. 438 (S.D. Ohio 1993) (transfer of proceeds of fraudulently obtained bank loan).

H. Deposit of proceeds:

— *United States v. Lovett*, 964 F.2d 1029 (10th Cir. 1992) (where fraud proceeds used as collateral for loan and loan proceeds issued in form of six checks, deposit of each check is a section 1957 violation).

— *United States v. Johnson*, 971 F.2d 562 (10th Cir. 1992) (if defendant had obtained fraud proceeds and deposited them in two-step transaction, second step would have been section 1957 violation).

— *United States v. Hollis*, 971 F.2d 1441 (10th Cir. 1992) (deposit of checks representing proceeds of insurance fraud scheme is section 1957 violation).

— *United States v. Lombardi*, 5 F.3d 568 (1st Cir. 1993) (imposition of separate punishment for simply depositing proceeds in receipt-and-deposit case reflects "deliberate policy choice by Congress").

— *United States v. Rutgard*, 108 F.3d 1041 (9th Cir. 1997) (dicta) (deposit of more than $10,000 in tainted funds is a section 1957 violation, regardless of amount of clean money in the account).

I. Withdrawal of proceeds:

— *United States v. Norman*, 143 F.3d 375 (8th Cir. 1998) (withdrawing criminal proceeds from bank account violates section 1957 regardless of motive; that bank advised defendant it wanted the account closed is no defense).

J. Sale of proceeds:

— *United States v. Griffith*, 17 F.3d 865 (6th Cir. 1994) (sale of inventory derived from mail/wire fraud offenses to third party is section 1957 violation).

K. Use of proceeds to continue scheme:

— *United States v. Johnson*, 971 F.2d 562 (10th Cir. 1992) (sending portion of proceeds of fraud back to victims as false "profits" constitutes section 1957 violation)

— *United States v. Smith*, 44 F.3d 1259 (4th Cir. 1995) (wire transfer as second step in multi-step fraud scheme is section 1957 offense).

— *See* "merger" issue cases at page 26.

L. Knowledge requirement:

— *United States v. Turman*, 122 F.3d 1167 (9th Cir. 1997) (the Government must prove defendant knew property was criminally-derived, but need not prove defendant knew money laundering itself was illegal).

— *United States v. Sokolow*, 81 F.3d 397 (3d Cir. 1996) (defendant does not need to know that the monetary transaction constitutes a criminal offense; *Ratzlaf* distinguished).

— *United States v. Smith*, 44 F.3d 1259 (4th Cir. 1995) (knowledge that the property is criminally derived is all that is required; defendant need not know that the transaction was part of a larger scheme to conceal or disguise anything).

— *United States v. Campbell*, 977 F.2d 854 (4th Cir. 1992) (merchant doing business with drug dealer can be convicted under section 1957 if he/she knows of, or is willfully blind to, customer's source of funds; *United States v. Wynn*, 61 F.3d 921 (D.C. Cir. 1995) (same for merchant selling clothes to drug dealer).

— For cases on constitutionality of knowledge requirement, *see* page 99.

XVI. Attempt

A. Section 1956(a)(1) cases:

— *United States v. DeSantiago-Flores*, 107 F.3d 1472 (10th Cir. 1997) (person who travels from Colorado to California with SUA proceeds, intending to use the proceeds to buy drugs, but is arrested along the way, is guilty of an attempt to conduct a financial transaction with intent to promote, in violation of section 1956(a)(1)(A)(i)).

B. Section 1956(a)(2) cases:

— *United States v. Abrego*, 141 F.3d 142 (5th Cir. 1998) (transporting cash to the border where it is seized constitutes "attempt" to transport in violation of subsection (a)(2)).

— *United States v. Piervinanzi*, 23 F.3d 670 (2d Cir. 1994) (phone call to bank to direct wire transfer out of the United States to promote bank fraud scheme constitutes section 1956(a)(2)(A) offense even though bank detects scheme and does not make transfer).

— *United States v. $3,000 in Cash*, 906 F. Supp. 1061 (E.D. Va. 1995) (attempt to wire fraud proceeds to Nigeria).

C. Sting cases:

— *United States v. Wydermyer*, 51 F.3d 319 (2d Cir. 1995) (defendant who receives sting money and is arrested as he proceeds to count it is guilty of attempt).

— *United States v. Fuller*, 974 F.2d 1474 (5th Cir. 1992) (where defendant arranges plan to launder money, accepts cash, and is on his way to deliver money when arrested, there is "substantial step" toward completion of section 1956(a)(3) offense).

— *United States v. Loehr*, 966 F.2d 201 (6th Cir. 1992) (where car salesman accepts cash, prepares paperwork in name of fictitious buyer, and says Form 8300 will not be filed, the Government has shown attempt to commit section 1956(a)(3) violation); *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (same; involving false Form 8300); *United States v. McLamb*, 985 F.2d 1284 (4th Cir. 1993) (same).

— *United States v. Dimeck*, 815 F. Supp. 1425 (D. Kan. 1993) (attempts are not limited to incomplete transactions; defendant who picks up bag of plain paper thinking that it contains currency and intending to transport it to California is guilty of attempt to conduct financial transaction. impossibility is not a defense), *rev'd on other grounds*, 24 F.3d 1239 (10th Cir. 1994).

— *United States v. Knecht*, 55 F.3d 54 (2d Cir. 1995) (attempt to commit sting violation where defendant agrees to launder money, gives an undercover agent a check, and is arrested when the agent is about to deliver the cash in return).

D. Insufficient evidence:

— *United States v. Nelson*, 66 F.3d 1036 (9th Cir. 1995) (car dealer's suggestion of multiple ways of avoiding Form 8300 shows intent to violate section 1956(a)(3)(C), but did not go beyond mere preparation).

XVII. Aiding and Abetting

A. Defendant aids and abets money laundering if he associates himself with the illegal financial transaction and seeks by his action to make the criminal conduct succeed:

— *United States v. Willey*, 57 F.3d 1374 (5th Cir. 1995) (defendant causes third parties to conduct transactions among themselves that have the effect of concealing defendant's role in the underlying SUA by increasing the apparent separation between defendant and money).

— *United States v. Hemmingson*, ___ F.3d ___, 1998 WL 671376 (5th Cir. Sept. 30, 1998) (defendant who steered illegal campaign contribution to codefendant, knowing codefendant would conceal or disguise its origin, aided and abetted money laundering scheme).

— *United States v. Haley*, 1998 WL 165130 (6th Cir. 1998) (unpublished) (defendant aids and abets money laundering if he associates himself with scheme to launder fraud proceeds by cashing money orders).

B. Defendant guilty of conducting financial transaction conducted by third person:

— *United States v. Jackson*, 61 F.3d 921 (9th Cir. 1995) (it is not necessary for aider and abetter to know who actually committed the crime).

— *United States v. Cavalier*, 17 F.3d 90 (5th Cir. 1994) (person who causes third person to send a check is guilty of conducting a financial transaction under section 2).

— *United States v. Chandler*, 996 F.2d 1073 (11th Cir.1993) (land was purchased by third person who received title, but circumstantial evidence indicated that purchase was on behalf of defendant); *United States v. Winfield*, 997 F.2d 1076 (4th Cir. 1993) (same).

— *United States v. Castaneda*, 16 F.3d 1504 (9th Cir. 1994) (person who procures another to launder sting money for an undercover agent is guilty as aider and abettor).

— *United States v. Smith*, 44 F.3d 1259, 1266 (4th Cir. 1995) (person who aids and abets financial transaction is not required to be in possession of the money as it is being laundered).

— *Cf. United States v. Kramer*, 73 F.3d 1067 (11th Cir. 1996) (when jury finds defendant not guilty of conducting transfer, it necessarily finds him not guilty of aiding and abetting transfer because an aider and abetter is guilty as a principal).

C. Evidence sufficient to show defendant intended to aid principals in laundering funds:

— *United States v. Santos*, 20 F.3d 280 (7th Cir. 1994) (person who allowed car to be titled in his name so that drug dealer would not have to show that he used drug proceeds to buy car is guilty of money laundering).

— *United States v. Williams*, 87 F.3d 249 (8th Cir. 1996) (person who opens bank account at defendant's request and has frequent communication with defendant at time defendant transfers SUA proceeds to the account is an aider and abetter).

— *But see United States v. Termini*, 992 F.2d 879 (8th Cir. 1993) (person who collects coins from video gambling machines not liable for subsequent commingling of gambling proceeds with other funds in violation of money laundering statute).

D. Aiding and abetting attempt:

— *United States v. Salazar*, 958 F.2d 1285, 1293 (5th Cir. 1992) (where drug dealer sends female associate with bundle of cash to wire transfer office with intent that she wire drug proceeds, and associate enters business with bag containing cash and is arrested, drug dealer is guilty of aiding and abetting attempt to conduct financial transaction, and associate, having taken a substantial step toward completion of the transaction, is guilty of attempt).

XVIII. Conspiracy

A. In general:

— *United States v. Pena-Rodriguez*, 110 F.3d 1120, 1125 (5th Cir. 1997) (elements of section 371 conspiracy to launder money with intent to promote are: (1) agreement; (2) financial transaction constituting an overt act; (3) such transaction involves SUA proceeds; (4) person conducting transaction had intent to promote; and (5) transaction affected interstate commerce).

— *United States v. Blackwell*, 954 F. Supp. 944 (D.N.J. 1997) (setting forth elements of section371 conspiracy to commit money laundering).

— *United States v. Payne*, 962 F.2d 1228(6th Cir. 1992) (defendant has burden of proving withdrawal from conspiracy).

— *United States v. Murphy*, No. 91-5416 (4th Cir. 1993) (unpublished), slip op. at 19 n.22 (in conspiracy case, the Government need not prove that property involved in transaction was in fact SUA "proceeds").

B. Knowledge:

— *United States v. Awan*, 966 F.2d 1415 (11th Cir. 1992) (knowledge that funds are proceeds of unlawful activity is "the essential aspect of the conspiracy charge").

— *United States v. Rockson*, 1996 WL 733945 (4th Cir. Dec. 24, 1996) (unpublished) (section 1956(h) conspiracy requires proof that defendant knew money to be laundered was proceeds of some form of unlawful activity).

C. Co-conspirators need not share same belief as to illegal source of property being laundered.

— *United States v. Stavroulakis*, 952 F.2d 686 (2d Cir. 1992) (in case involving conspiracy to violate "sting" statute, 18 U.S.C. § 1956(a)(3), did not matter that agent told one conspirator that money was drug proceeds and another that money was gambling proceeds, as long as each conspirator was told it was SUA proceeds).

— *United States v. Aliotta*, 1998 WL 43015 (S.D.N.Y. 1998) (conspirators need not agree on what SUA generated money laundered).

D. *Pinkerton* liability:

— *United States v. Mathison*, 157 F.3d 541 (8th Cir. 1998) (defendant who joins money laundering conspiracy is substantively liable for money laundering offenses committed by coconspirators).

— *United States v. Tokars*, 95 F.3d 1520 (11th Cir. 1996)(conviction of substantive money laundering offense may be predicated on *Pinkerton* liability); *United States v. Gollott*, 939 F.2d 255, 257 n.2 (5th Cir. 1991) (same; BSA violations).

— *United States v. Awan*, 966 F.2d 1415 (11th Cir. 1992) (conspiracy not established, therefore conviction for substantive violation predicated on *Pinkerton* must be reversed).

— *United States v. Abrego*, 141 F.3d 142 (5th Cir. 1998) (defendant liable for transactions conducted by coconspirators, even though he never personally handled the drug proceeds; applies to both section 1956(a)(1) and (a)(2)).

— *United States v. Sax*, 39 F.3d 1380 (7th Cir. 1994) (defendant guilty of participating in a drug conspiracy is liable for money laundering acts that were part of the conspiracy).

— *United States v. Torres*, 53 F.3d 1129 (10th Cir. 1995) (person charged in drug conspiracy, but not conspiracy to money launder, *not* liable under *Pinkerton* for substantive money laundering offense).

E. Money laundering as part of drug conspiracy:

— *United States v. Arnold*, 117 F.3d 1308 (11th Cir.1997) (money laundering may be alleged as part of a section 846 conspiracy, and need not be alleged as a separate conspiracy).

— *United States v. Otis*, 127 F.3d 829 (9th Cir. 1997) (money launderer may be guilty of section846 drug conspiracy by aiding and abetting drug scheme).

F. Overt acts for section 371 conspiracy:

— *United States v. Blackwell*, 954 F. Supp. 944 (D.N.J. 1997) (overt act need not be a substantive money laundering offense; it was therefore irrelevant that placement of money in safe deposit box, which was alleged as an overt act, was not a money laundering offense at the time it occurred).

— *But see United States v. Fierro*, 38 F.3d 761 (5th Cir. 1994) (finding evidence sufficient to establish conspiracy, but suggesting, in *dicta*, that the overt act committed by one conspirator must be a substantive money laundering offense).

G. Sufficiency of the evidence:

— *United States v. Navarro*, 145 F.3d 580 (3d Cir. 1998) (conviction requires proof defendant knew the purpose of the conspiracy, and that he deliberately joined the conspiracy; admission that he knew he was receiving drug money was sufficient to establish knowledge of the conspiracy, and the act of picking up cash shows that

defendant joined it).

— *United States v. Nelson*, 66 F.3d 1036 (9th Cir. 1995) (even though car dealer's suggestion of ways to avoid Form 8300 were insufficient to show "substantial step" to convict for attempt, they were sufficient to show agreement and overt act for conspiracy).

— *United States v. Vargas*, 986 F.2d 35 (2d Cir. 1993) (three defendants who represent to undercover that they regularly convert small bills to large and send money out of the country, and express willingness to do so for drug dealer, convicted of conspiracy to violate section 1956(a)(1)(B)(i)).

— *United States v. Isabel*, 945 F.2d 1193 (1st Cir. 1991) (drug dealer and money launderer convicted of conspiring with each other).

— *United States v. Carr*, 25 F.3d 1194 (3d Cir. 1994) (large quantities of cash in defendant's residence, positive dog sniffs, and drug packaging equipment among factors providing circumstantial evidence of defendant's link to money laundering conspiracy).

— *United States v. Pena-Rodriguez*, 110 F.3d 1120, 1125 (5th Cir. 1997) (defendants who transferred drug proceeds to each other convicted of conspiring to launder money with intent to promote); *but see United States v. Garza*, 118 F.3d 278 (5th Cir. 1997) (section 1956(h) conspiracy conviction reversed because there was no evidence that defendants engaged in a financial transaction).

H. Sting cases:

— *United States v. Breque*, 964 F.2d 381 (5th Cir. 1992) (two money launderers may be convicted of conspiring with each other to launder sting money for an undercover agent in violation of section 1956(a)(3)(C)); *United States v. Payne*, 962 F.2d 1228 (6th Cir. 1992); *United States v. Fuller*, 974 F.2d 1474 (5th Cir. 1992).

— *United States v. Payne*, 962 F.2d 1228 (6th Cir. 1992) (once sting operation begins, new conspirators previously unknown to the Government may be discovered; government agents not excessively involved in the conspiracy where agents provided the money but defendants devised the scheme to launder it).

— Under section 2, defendant may be convicted of causing undercover agent to launder money; *United States v. Levy*, 969 F.2d 136, 141 (5th Cir. 1992) (causing agent to violate Travel Act with intent to violate title 31).

I. Co-conspirator statements admissible as statements made during and in furtherance of conspiracy:

— *United States v. Esacove*, 943 F.2d 3 (5th Cir. 1991) (statement describing past

money laundering activity made to undercover agent for purpose of soliciting advice on how to conceal money laundering from grand jury was admissible as made in furtherance).

J. Jury Instructions:

— *United States v. Arditti*, 955 F.2d 231 (5th Cir. 1992) (willfulness is not an element of conspiracy to violate section 1956).

— *United States v. Winfield*, 997 F.2d 1076 (4th Cir. 1993) (even though section 371 count alleged conspiracy to violate section 1956 and section 5324, because court instructed only on CTR violation, conspiracy to violation section 1956 was not properly submitted to the jury).

— *See* "jury instructions" *generally* at page 73.

K. Multiple objects:

— *United States v. Hildebrand*, 152 F.3d 756, 762 (8th Cir. 1998) (where intent to promote and intent to conceal or disguise are both alleged, proof of either will do, but the evidence must support intent to promote if the higher offense level is applied at sentencing).

— *United States v. Nattier*, 127 F.3d 655 (8th Cir. 1997) (money laundering may be alleged as one object of multi-object section 371 conspiracy, as long as jury in instructed that it must be unanimous as to which offense(s) were the object of the conspiracy).

— *United States v. Carr*, 25 F.3d 1194 (3d Cir. 1994) (where indictment alleges conspiracy with multiple objects, jury need only find that defendant knowingly and intentionally committed acts furthering *any one* of them).

L. Statute of limitations:

— *United States v. Blackwell*, 954 F. Supp. 944 (D.N.J. 1997) (for section 371 conspiracy, the Government must prove one overt act occurred within the five-year limitations period).

M. Conspiracy charged under section1956(h):

Effective Oct. 28, 1992, conspiracies to violate sections 1956 and 1957 are charged as violations of section 1956(h); section 1956(h) is modeled on 21 U.S.C. § 846, which does not require proof of an overt act; *see* Cong. Rec. S12241 (daily ed. Aug. 2, 1991) (money laundering conspiracy statute is modeled on section 846); H.R. Rep. 102-28, 102d Cong., 1st Sess. 49 (1991) (same); *United States v. Shabani*, 513 U.S. 10 (1994) (section 846 does

not require proof of overt act); but the case law regarding proof of an overt act under section 1956(h) is mixed.

N. Overt acts for section 1956(h) conspiracy:

— *United States v. Abrego*, 141 F.3d 142 (5th Cir. 1998) (finding it unnecessary to decide if section 1956(h) requires proof of an overt act because proof of the substantive offenses was sufficient to prove overt acts if such requirement exists; noting section 1956(h) is identical to section 846 which does not require overt acts).

— *United States v. Pacella*, 1996 WL 288479 (E.D.N.Y. May 24, 1996) (under section 1956(h) there is no requirement of an overt act).

— *But see United States v. Emerson*, 128 F.3d 557 (7th Cir. 1997) (dicta) (section 1956(h) requires proof of an overt act); *United States v. Hand*, 1995 WL 743841 (10th Cir. Dec. 15, 1995) (unpublished) (same); *United States v. Olson*, 1995 WL 743845 (10th Cir. 1995) (Table) (same).

— *United States v. Navarro*, 145 F.3d 580 (3d Cir. 1998) (listing elements of section 1956(h) conspiracy as including overt acts).

— *Cf. United States v. Arnold*, 117 F.3d 1308 (11th Cir. 1997) (setting forth the elements of a non-overt act conspiracy under section 846).

O. Straddle conspiracy:

— *United States v. Abrego*, 141 F.3d 142 (5th Cir. 1998) (higher penalty under section1956(h) applies to "straddle" conspiracies; no violation of *ex post facto* clause).

— *United States v. Boyd*, 149 F.3d 1062 (10th Cir. 1998) (same).

— *United States v. Tokars*, 95 F.3d 1520 (11th Cir. 1996) (rejecting, without discussion, argument that section1956(h) applies only to conspiracies that begin after Oct. 28, 1992).

— *Cf. United States v. Hargus*, 128 F.3d 1358 (10th Cir. 1997) (if conspiracy continues after increase in offense level under the sentencing guidelines takes effect, the higher guideline applies).

P. Maximum penalty:

— *United States v. Nattier*, 127 F.3d 655 (8th Cir. 1997) (maximum penalty for section 371 conspiracy is five years, even if money laundering is alleged as an object).

— *But see United States v. Coscarelli*, 105 F.3d 984 (5th Cir. 1997), *aff'd en banc*,

149 F.3d 342 (5th Cir. 1998) (effect of section 1956(h) is to raise the maximum penalty for a section 371 conspiracy to 20 years if section 1956 violation is charged as an object).

XIX. Civil Money Laundering Enforcement: 18 U.S.C. § 1956(b)

— *United States v. Haywood*, 864 F. Supp. 502 (W.D.N.C. 1994) (civil suit against attorney for laundering proceeds).

XX. Form of Indictment

A. Multiplicity/Duplicity:

— *United States v. Klinger*, 128 F.3d 705 (9th Cir. 1997) (multiplicity/duplicity challenge is waived if not raised pretrial).

1. Alternative mental states:

— *United States v. Navarro*, 145 F.3d 580 (3d Cir. 1998) (alternative intents should be alleged in the conjunctive in the same count in the indictment. they represent separate means of committing the same offense).

— *United States v. Holmes*, 44 F.3d 1150 (2d Cir. 1995) (it is multiplicitous to charge defendant in multiple counts with violations of different subsections of section 1956(a)(1) based on same financial transaction).

— *United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995) (no error in charging intent to promote and intent to conceal or disguise in same count where jury instruction was worded conjunctively, requiring jury to find both intents to convict).

— *But see United States v. Brown*, 944 F.2d 1377 (7th Cir. 1991) (the Government should be cautious about alleging intent to promote and purpose to conceal or disguise in conjunctive in same count); *United States v. Winfield*, 997 F.2d 1076 (4th Cir. 1993) (no discussion, but multiple convictions based on same transaction affirmed).

— *Cf. Schad v. Arizona*, 501 U.S. 624 (1991), *reh'g denied*, 501 U.S. 1277 (1991) (in murder case, alternative mental states—premeditation and felony murder—may be alleged in the conjunctive in the same count); *Griffin v. United States*, 502 U.S. 46 (1991) (when multiple objects of conspiracy are alleged in the conjunctive, general guilty verdict will be sustained).

— *United States v. Puello*, 814 F. Supp. 1155 (E.D.N.Y. 1993) (real property and vehicles used to facilitate food stamp fraud scheme that included money laundering); *Eleven Vehicles, supra*.

— *United States v. All Assets of Blue Chip Coffee, Inc.*, 836 F. Supp. 104, 108 (E.D.N.Y. 1993) (property used to facilitate underlying section 659 offense forfeitable under section 981(a)(1)(A)).

— *But see United States v. Hawkey*, 148 F.3d 920 (8th Cir. 1998) (emphasizing that the property must have been used to facilitate the laundering offense).

d. "Clean" money involved in structuring cases may not satisfy substantial connection test:

— *United States v. All Funds on Deposit (Great Eastern Bank)*, 804 F. Supp. 444, 447 (E.D.N.Y. 1992) (legitimate funds in bank account do not facilitate structuring; account itself is not subject to forfeiture; cases involving facilitation of section 1956 or 1957 offenses distinguished).

— *Marine Midland Bank N.A. v. United States*, 1993 WL 158542 at *7-8 (S.D.N.Y. May 11, 1993) (untainted funds in interbank account used to "clear" structured money orders not forfeitable under facilitation theory), *aff'd on other grounds*, 11 F.3d 1119 (2d Cir. 1993).

D. Property held by third parties:

Property may be forfeited from person other than perpetrator of money laundering offense.

— *United States v. All Monies*, 754 F. Supp. 1467, 1473 (D. Haw. 1991) (in *in rem* action against bank account, laundered money is forfeitable whether or not account holder was involved in the laundering offense; innocent account holder's remedy is affirmative "innocent owner" defense).

— *United States v. All Funds on Deposit in Any Accounts*, 801 F. Supp. 984 (E.D.N.Y. 1992) (innocence of the owner does not itself prevent forfeit if the Government can demonstrate probable cause that the property, apart from the actions of the owner, is connected to illegal activity).

E. Property "traceable to" forfeitable property:

— *United States v. 5709 Hillingdon Road*, 919 F. Supp. 863 (W.D.N.C. 1996) (forfeiture of real property on which mortgage was retired with funds traceable to 33 structured deposits), *rev'd on other grounds, United States v. Leak*, 123 F.3d 787 (4th Cir. 1997).

B. Bill of particulars:

— *United States v. Parlavecchio*, 903 F. Supp. 788 (D.N.J. 1995) (defendant's request for bill of particulars regarding underlying SUA offense that generated proceeds laundered in each instance denied; schedule of check numbers, dates and amounts included in indictment is sufficient detail).

— *United States v. Finn*, 919 F. Supp. 1305 (D. Minn. 1995) (no bill of particulars needed where indictment gives date, amount and location of financial transaction).

C. Alleging the SUA being promoted:

— *United States v. Mankarious*, 151 F.3d 694 (7th Cir. 1998) (because proof of a specific predicate offense is not required, the indictment need not specify the particular mail fraud offense underlying the money laundering charge).

— *United States v. Bitzur*, 1996 WL 665621 (S.D.N.Y. Nov. 18, 1996) (because the elements of the section 2314 offense being promoted are "ancillary to" and not the "core" of the criminality in a money laundering offense, it is sufficient to allege that the defendant intended to promote a violation of section 2314 without alleging the elements of that offense).

D. Alleging the financial transaction:

— *United States v. Flores*, 63 F.3d 1342 (5th Cir. 1995) (not necessary to describe financial transactions in the indictment. tracking the language of the statute is sufficient).

E. Alleging the knowledge element:

— *United States v. Carr*, 25 F.3d 1194, 1205 n.5 (3d Cir. 1994) (indictment need not allege what form of unlawful activity defendant believed to be the source of the proceeds being laundered).

F. Alleging willfulness:

— *United States v. Cancelliere*, 69 F.3d 1116 (11th Cir. 1995) (willfulness is not an element of the offense and need not be alleged in the indictment, but if the Government does allege willfulness, and the defendant relies on that in putting on a defense, he is entitled to a willfulness instruction).

G. Alleging "belief" in sting cases:

— *United States v. Wydermyer*, 51 F.3d 319 (2d Cir. 1995) (failure to allege that defendant charged with section 1956(a)(3)(B) violation believed property was the

not relevant conduct for computing money laundering sentence).

— *United States v. Hildebrand*, 152 F.3d 756 (8th Cir. 1998) (money laundering does not group with underlying fraud under section 3D1.2(d); seriousness of one is measured by amount laundered, while seriousness of the other is measured by amount of loss); *United States v. O'Kane*, ___ F.3d ___, 1998 WL 568813 (8th Cir. Sept. 9, 1998) (same).

— *United States v. Kneeland*, 148 F.3d 6 (1st Cir. 1998) (money laundering and underlying fraud do not group under section 3D1.2(d) because the offense level for money laundering is not determined on the basis of total harm).

— *United States v. Lombardi*, 5 F.3d 568 (1st Cir. 1993) (money laundering and underlying mail fraud offenses do not group under section 3D1.2(a) or (b) because they don't involve the same transaction and don't involve the same victim); *United States v. Smith*, 13 F.3d 1421, 1428-29 (10th Cir. 1994) (same for section 1957; that knowledge of mail fraud is specific offense characteristic section 1957 sentence is irrelevant).

— *United States v. Arnold*, 984 F. Supp. 326 (E.D. Pa. 1997) (money laundering and bank larceny do not group under 3D1.2 (b), (c), or (d); they do not involve same victim or common scheme (distinguishing *Wilson, infra*); and one offense level is measured by loss to the victim while the other is measured by value of the funds laundered).

2. Cases grouping money laundering with SUA:

— *United States v. Mullens*, 65 F.3d 1560, 1564 (11th Cir. 1995) (money laundering and underlying fraud properly grouped under 3D1.2(d)); *United States v. Adams*, 74 F.3d 1093 (11th Cir. 1996) (same); *United States v. Wilson*, 98 F.3d 281 (7th Cir. 1996) (same); *United States v. Walker*, 112 F.3d 163 (4th Cir. 1997) (same; distinguishing *Porter*).

— *United States v. Emerson*, 128 F.3d 557 (7th Cir. 1997) (following *Wilson*; if grouping under 3D1.2 is required in conceal or disguise cases, *a fortiori*, it is required in intent to promote cases); *see* 1998 WL 516773 (7th Cir. July 30, 1998) (unpublished) (following remand, affirming grouping under 3D1.2(d), not 3D1.2(b)).

— *United States v. Lopez*, 104 F.3d 1149 (9th Cir. 1997) (money laundering and underlying drug offense must be grouped under 3D1.2(b) because they involve the same victim and same criminal objective).

— *United States v. Cusumano*, 943 F.2d 305, 313 (3d Cir. 1991) (money laundering and fraud group under 3D1.2(b) because they were part of same

laid out fraud scheme in detail).

J. Alleging aiding and abetting:

— *United States v. Espy*, 1996 WL 607020 (E.D. La. 1996) (indictment need not specify whether defendant is charged as a principal or as an aider and abettor).

K. Conspiracy:

— *United States v. Conley*, 37 F.3d 970, 981 n.15 (3d Cir. 1994) (section 371 conspiracy to commit money laundering need not allege every element of the substantive offense); *United States v. Wydermyer*, 51 F.3d 319 (2d Cir. 1995) (same).

— It is sufficient to allege that defendants "conspired to launder money in violation of section1956(a)(3)(B)." *United States v. Fuller*, 974 F.2d 1474 (5th Cir. 1992); *see United States v. Sierra-Garcia*, 760 F. Supp. 252, 258 (E.D.N.Y. 1991).

— *But see United States v. Akpi*, No. 92-5481 (4th Cir. 1993) (unpublished) (in section 1029 case, essential elements of the substantive offense, including affect on interstate commerce, must be alleged in conspiracy count and included in jury instructions).

— *United States v. Knowles*, 2 F. Supp.2d 1135 (E.D. Wis. 1998) (alleging defendant conspired to commit "money laundering" does not sufficiently identify the offense defendant conspired to commit. Government must at least allege nature of financial transaction and SUA).

XXI. Joinder and Severance

A. Joinder of counts:

— *United States v. Misher*, 99 F.3d 664 (5th Cir. 1996) (no error is denying severance of drug conspiracy count from substantive money laundering).

— *United States v. Jordan*, 112 F.3d 14 (1st Cir. 1997) (joinder of tax count with money laundering and fraud counts was prejudicial because defense to tax count would have incriminated defendant on other counts).

B. Joinder of defendants:

— *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (money laundering charges against X were properly joined with charges against Y where all transactions occurred within a short time period and involved common cast of characters; uncharged conduct is relevant to propriety of joinder).

G. Choice of guideline where indictment alleges alternative specific intents:

— *United States v. Nattier*, 127 F.3d 655 (8th Cir. 1997) (if jury returns only general verdict on count alleging both section 1956(a)(1)(A)(i) and section 1956(a)(1)(B)(i) intents, court should sentence defendant on the alternative that yields the lower sentencing range, unless the trial evidence is so strong that the court can "confidently say" jury found defendant guilty of the more serious offense).

— *United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995) (where count alleged concealment and promotion, level 23 was appropriate).

H. Disparate treatment of codefendants:

— *United States v. Pierro*, 32 F.3d 611 (1st Cir. 1994) (fact that codefendants who committed SUA but not the money laundering offense received lighter sentences is not a ground for downward departure).

I. Amount of money involved in scheme:

1. Amount of money laundered:

— *United States v. Zagari*, 111 F.3d 307 (2d Cir. 1997) (because preponderance standard applies to sentencing, guideline may be based on amounts involved in money laundering counts on which defendant was acquitted).

— *United States v. Cole*, 988 F.2d 681 (7th Cir. 1993) (where there are multiple 1956 and 1957 convictions, amount involved in both sets of counts is aggregated, and guideline that produces higher offense level applies).

— *United States v. Agunloye*, 999 F. Supp. 1182 (N.D. Ill. 1998) (court may include amount involved in count for which defendant was acquitted when computing base offense level for conspiracy).

— *United States v. Mankarious*, 151 F.3d 694 (7th Cir. 1998) (defendant not entitled to reduction in amount used to calculate sentencing level on ground that victim of underlying fraud was a corporation of which defendant was part owner. only issue is how much money was involved in the money laundering offense).

— *United States v. Barrios*, 993 F.2d 1522 (11th Cir. 1993) (where SUA proceeds laundered by defendant earn interest during laundering process, total sum including interest is the proper measure for calculating the sentencing enhancement under section 2S1.1(b)(2).

— *United States v. Rose*, 20 F.3d 367 (9th Cir. 1994) (amount involved includes uncharged money laundering offenses; where defendant obtained $2 million in

closing statements, did not narrow or amend the indictment).

XXIV. Jury Instructions

A. Willfulness:

— *United States v. Brown*, 31 F.3d 484, 490 n.3 (7th Cir. 1994) (willfulness is not an element of a section 1956 offense, the Government is not reqiured to prove defendants knew that their conduct was illegal; *Ratzlaf* distinguished); *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (same); *United States v. Lewis*, 117 F.3d 980 (7th Cir.1997) (same).

— *United States v. Turman*, 122 F.3d 1167 (9th Cir 1997) (the Government must prove the defendant knew the laundered funds were criminal proceeds, but it is not required to prove the defendant knew that his acts or omissions were illegal).

— *United States v. Arditti*, 955 F.2d 231 (5th Cir. 1992) (willfulness not an element of conspiracy to violate section 1956, and specific intent instruction not required for substantive violation of section 1956(a)(3) as long as court tracks language of (a)(3)(A) and (B) regarding intent to promote and to conceal or disguise).

B. Knowledge:

— *United States v. Stein*, 37 F.3d 1407 (9th Cir. 1994) (even though court instructed jury that defendant must know that laundered money was proceeds of unlawful act, subsequent instruction that defendant need not know his conduct was unlawful may have negated the first instruction and confused the jury; conviction reversed).

— *United States v. Turman*, 122 F.3d 1167 (9th Cir 1997) (in instructing jury that defendant doesn't have to know that money laundering is illegal, court must make clear that defendant nevertheless must know that the laundered funds are proceeds of criminal activity; but failure to make this clear in instruction given before *Stein* was decided is not plain error); *United States v. Ripinsky*, 109 F.3d 1436 (9th Cir. 1997) (same).

— *United States v. Knapp*, 120 F.3d 928 (9th Cir. 1997) (where instruction made clear that notwithstanding the general knowledge instruction, the jury still had to find defendant knew the property was SUA proceeds, there is no reason to reverse the conviction under *Stein*); *United States v. Ly*, 141 F.3d 1181 (9th Cir. 1998) (Table) (same).

— *United States v. Klinger*, 128 F.3d 705 (9th Cir. 1997) (no plain error, despite *Stein* violation, where defendant was convicted of "knowingly" laundering the proceeds of SUA that he himself committed).

— *United States v. Wilson*, 131 F.3d 1250 (7th Cir. 1997) (if money laundering and SUA are grouped under section 3D1.2(d), entire amount taken from victims in underlying fraud scheme is "relevant conduct" under section 1B1.3 and may be used in computing sentence for money laundering).

— *But see United States v. Hildebrand*, 152 F.3d 756 (8th Cir. 1998) (because money laundering and SUA do not group under section 3D1.2(d), sentence is based only on amount laundered, not on amount loss suffered by victims of underlying fraud).

— *United States v. Johnson*, 971 F.2d 562, 576 & n.10 (10th Cir. 1992) (if money laundering and SUA offenses do not group for section 3D1.2 purposes, money involved in SUA offense does not combine with money involved in money laundering offense for purpose of calculating offense level; but money involved in *uncharged* money laundering offenses may be included).

— *United States v. Blarek*, 7 F. Supp. 2d 192 (E.D.N.Y. 1998) (all money received by money launderer from drug trafficker in whatever form is counted in determining offense level, except funds received before effective date of statute in 1986).

3. Amount of money attributable to defendant:

— *United States v. Gwiazdzinski*, 141 F.3d 784 (7th Cir. 1998) (defendant responsible for amount he launders personally plus amount laundered by codefendant that was foreseeable to defendant).

— *United States v. House*, 110 F.3d. 1281 (7th Cir. 1997) (in section 1956(h) conspiracy, amount attributable to each defendant is amount that defendant would have reasonably foreseen would be laundered in the scope of the conspiracy).

— *United States v. Maggi*, 44 F.3d 478 (7th Cir. 1995) (in conspiracy case, amount attributable to defendant is amount coconspirators intended to launder and which was reasonably foreseeable to the defendant).

— *United States v. Hildebrand*, 152 F.3d 756 (8th Cir. 1998) (same; but it is the amount *laundered,* not the amount of proceeds conspirators would derive from the underlying offense, that must be foreseeable to codefendant).

— *United States v. Hmeidan*, 1998 WL 553154 (6th Cir. 1998) (unpublished) (money laundered by coconspirators, if foreseeable to defendant, is used in determining the guideline range).

— *United States v. Haley*, 1998 WL 165130 (6th Cir. 1998) (unpublished) (defendant responsible for entire amount laundered, even though portion of that

— *But see United States v. Nattier*, 127 F.3d 655 (8th Cir. 1997) (if the Government alleges alternative specific intents in same count, court must instruct jury that it must be unanimous as to which mental state is the basis for the conviction).

E. Conceal or disguise:

— *United States v. Carter*, 966 F. Supp. 336 (E.D. Pa. 1997) (quoting approved instruction on intent to conceal or disguise).

F. Elements of the money laundering offense:

— *United States v. Lovett*, 964 F.2d 1029 (10th Cir. 1992) (failure to define "monetary transaction" in section 1957 case not plain error where there was overwhelming evidence that defendant's conduct was a monetary transaction).

— *United States v. DeSantiago-Flores*, 107 F.3d 1472 (10th Cir. 1997) (failure to define "transaction" is not plain error; definition in section 1956(c)(3) is not highly technical).

— *United States v. Bell*, No. 92-5656 (4th Cir. Aug. 16, 1993) (unpublished) (court's giving instructions that included elements of subsections of section 1956 not charged is not error absent showing that irrelevant instructions caused prejudice).

— *United States v. Rockson*, 1996 WL 733945 (4th Cir. Dec. 24 1996) (unpublished) (court should instruct jury that it must find that money transmitter was a "financial institution"; it may not take the issue away from the jury by telling them the transmitter is in fact a financial institution, even if it is obvious).

G. $10,000 Requirement for section 1957:

— *United States v. Adams*, 74 F.3d 1093, 1101 (11th Cir. 1996) (court should make it clear that although not all of the property must be criminally-derived, at least $10,000 worth of it must be criminally-derived).

— *United States v. Brown*, 1998 WL 166423 (4th Cir. 1998) (unpublished) (jury instructed that $10,000 requirement is satisfied only if it found that purchase of several automobiles on same day constituted a single monetary transaction).

H. Interstate commerce:

— *United States v. Van Brocklin*, 115 F.3d 587(8th Cir. 1997) (finding it unnecessary to determine whether effect on interstate commerce is a separate element of section 1957 offense on which jury must be instructed, because court defined "monetary transaction" as a transaction affecting interstate commerce).

— *United States v. Ripinsky*, 109 F.3d 1436 (9th Cir. 1997) (telling jury that deposit of a

— *United States v. Otis*, 127 F.3d 829 (9th Cir. 1997) (district court has discretion under section 5G1.2 to make money laundering sentence consecutive or concurrent with state sentence).

L. Effect of guideline amendments generally:

— *United States v. Agunloye*, 999 F. Supp. 1182 (N.D. Ill. 1998) (court applies sentencing guideline in effect on date of sentencing unless *ex post facto* concerns are implicated).

— *United States v. Connell*, 960 F.2d 191, 196 (1st Cir. 1992) (where guideline has been amended to provide for lower sentencing enhancement, defendant entitled to be resentenced by sentencing court; 2S1.3(b)(1)).

— *United States v. Vasquez*, 53 F.3d 1216 (11th Cir. June 7, 1995) (remanding to district court to determine whether to apply guideline amendment retroactively).

— *See* cases on "straddle conspiracies" at page 66.

M. Retroactive application of drug enhancement:

— *Note*: In 1991, section 2S1.1(b)(1) was amended to apply the three-level enhancement to sting cases if the defendant "knew *or believed*" the property was drug proceeds.

— *United States v. Perez*, 992 F.2d 295 (5th Cir. 1993) (in pre-1991 amendment case, "sting" defendant is subject to the three-level enhancement under section 2S1.1(b)(1) for "knowing" money is drug proceeds; no distinction between "knowing" and "believing").

— *United States v. Payne*, 962 F.2d 1228 (6th Cir. 1992) (1991 amendment applied retroactively to 1989 offense so that enhancement applies); *United States v. Loehr*, 966 F.2d 201 (6th Cir. 1992) (three-level enhancement applied to pre-amendment conduct).

— *United States v. Castaneda-Cantu*, 20 F.3d 1325 (5th Cir. 1994) (where conduct straddles the 1991 guideline amendment, the new guideline applies as long as at least one offense of conviction occurred after the effective date).

— *United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995) (there is no *ex post facto* problem when the "knew or believed" guideline is applied to a section 1956(a)(1) case because, if the money truly was drug proceeds, the defendant's accurate belief equates with knowledge).

— *But see United States v. Breque*, 964 F.2d 381 (5th Cir. 1992) ("sting" defendant not subject to retroactive enhancement; one cannot "know" sting money is drug proceeds);

K. Conspiracy:

— *United States v. Knapp*, 120 F.3d 928(9th Cir. 1997) (instruction must require jury to find that defendant "had to have knowledge of the objective of the conspiracy—money laundering—and that he had to intend to accomplish it").

— *United States v. Abrego*, 141 F.3d 142 (5th Cir. 1998) (where the conspiracy straddles the effective date of the statute, the jury must be told what the effective date is, and must find that the conspiracy continued after that date).

— *United States v. Narviz-Guerra*, 148 F.3d 530 (5th Cir. 1998) (conspiracy does not require unanimity instruction as to object of the conspiracy; where indictment alleges conspiracy to commit section 1956(a)(2) offense, jury does not need to agree that plan was to send money into, and not out of, the United States).

K. *Pinkerton* instruction:

— *United States v. Sax*, 39 F.3d 1380 (7th Cir. 1994) (the Government may get *Pinkerton* instruction relating to liability for money laundering offenses where indictment alleges money laundering acts as overt acts of a drug conspiracy).

L. Variance:

Variance from language in the indictment was harmless error.

— *United States v. Restivo*, 8 F.3d 274 (5th Cir. 1993) (where indictment alleged intent to promote SUA of bank fraud, court's failure to limit definition of SUA to bank fraud was not a constructive amendment to the indictment).

M. Special verdicts:

— *United States v. Nattier*, 127 F.3d 655 (8th Cir. 1997) (general verdict is adequate, even though indictment alleged alternative mental states, as long as court instructed jury it had to be unanimous as to the theory supporting conviction).

XXV. Guilty Plea

— *United States v. Coscarelli*, 149 F.3d 342 (5th Cir. 1998) (*en banc*) (when defendant pleads to section 371 conspiracy with money laundering object, court should apprise defendant that maximum sentence is 20 years, and should ascertain factual basis for money laundering object) (dissenting opinion. majority disposed of case on procedural grounds).

— *See* "downward departure" cases at page 80.

P. Role in the offense:

— *United States v. Gwiazdzinski*, 141 F.3d 784 (7th Cir. 1998) (lawyer who directed smurfs subject to two-level enhancement).

— *United States v. Spriggs*, 102 F.3d 1245 (D.C. Cir. 1996) (general manager of car dealership who arranged cash sales of cars in sting case was "manager or supervisor" for purposes of sentencing enhancement under section 3B1.1(b)).

— *United States v. Wisniewski*, 121 F.3d 54 (2d Cir. 1997) (same for owner of dealership; that another person played a larger role in managing the criminal activity is irrelevant).

— *United States v. Johnson*, 971 F.2d 562 (10th Cir. 1992) (no role in the offense enhancement where defendant acted alone in committing the money laundering offense, even if he supervised others in committing the underlying SUA).

— *United States v. Morris*, 18 F.3d 562 (8th Cir. 1994) (person who directs subordinate bank employees to conduct transactions to conceal fraudulent activities should receive two-level increase).

— *United States v. Carr*, 25 F.3d 1194 (3d Cir. 1994) (no reduction for minor or minimal role for money courier where particular transaction might not have taken place but for defendant's participation).

— *United States v. Carter*, 1997 WL 297076 (E.D. Pa. May 22, 1997) (sting defendant who set up "front" business played integral, not minor, role in the offense); *United States v. Ellis*, 1997 WL 297080 (E.D. Pa. May 22, 1997) (same for accountant who prepared fraudulent tax returns in same case).

— *United States v. Haley*, 1998 WL 165130 (6th Cir. 1998) (unpublished) (to be subject to four-level enhancement under section3B1.1(a), defendant need only lead or organize one person, in scheme that involves five participants, including defendant).

— *United States v. Blarek*, 7 F. Supp. 2d 192 (E.D.N.Y. 1998) (defendant gets two-level enhancement for supervising secretary, accountant and codefendant in money laundering scheme).

Q. Relevant conduct:

— *United States v. Carr*, 25 F.3d 1194 (3d Cir. 1994) (relevant conduct for sentencing enhancements limited to the money laundering offense of conviction; court may not consider defendant's role in other aspects of the scheme).

laundering conviction was for section 371 conspiracy which carries maximum of five years).

— *United States v. Hargus*, 128 F.3d 1358 (10th Cir. 1997) (where conspiracy "straddles" effective date of increase in offense level, the higher level applies).

C. Multiple-object conspiracy:

— *United States v. Coscarelli*, 105 F.3d 984 (5th Cir. 1997), aff'd *en banc*, 149 F.3d 342 (5th Cir. 1998) (where section371 conspiracy has multiple objects, including money laundering, court treats it as if there were multiple conspiracy counts and groups them under section 3D1.2; if money laundering conspiracy is the most serious, the offense level is determined by section2S1.1, regardless of whether the defendant was also convicted of substantive money laundering).

— *United States v. Ross*, 131 F.3d 970 (11th Cir. 1997) (defendant convicted of section 371 conspiracy with multiple objects, including money laundering, may be sentenced under the money laundering guideline even if acquitted on substantive counts; *see* section 1B1.2(d); but, in absence of special verdict form, court must find that, if it were trier of fact, it would have found defendant guilty of conspiracy to commit money laundering beyond a reasonable doubt).

— *United States v. Conley*, 92 F.3d 157 (3d Cir. 1996) (where section 371 conspiracy consists of multiple objects and jury returns only a general verdict, court may determine, as part of the sentencing process, whether money laundering was one of the objects so that the sentence may be based on the offense level for money laundering).

— *United States v. Nattier*, 127 F.3d 655 (8th Cir. 1997) (notwithstanding general verdict on multi-object conspiracy, court properly based sentence on money laundering guideline where jury also convicted defendants of substantive money laundering).

— *United States v. Miller*, 22 F.3d 1075 (11th Cir. 1994) (where conspiracy consists of multiple objects, court may not base sentence on a given object unless it instructed jury as to all elements of that object).

— *United States v. Castaneda*, 16 F.3d 1504 (9th Cir. 1994) (where defendant convicted of section 371 conspiracy to launder and to structure, court must determine which guidelines to apply).

— *United States v. Blarek*, 7 F. Supp. 2d 192 (E.D.N.Y. 1998) (where jury returns general verdict on section 1956(h) conspiracy alleging both 1956 and 1957 violations as objects, court must determine which guideline to apply).

— *See* cases discussing maximum statutory penalty for section 371 conspiracy at page 63.

— *United States v. Hargus*, 128 F.3d 1358 (10th Cir. 1997) (defendant's perjury at trial supported obstruction of justice enhancement).

— *United States v. Norman*, 143 F.3d 375 (8th Cir. 1998) (obstruction of justice enhancement applies even though defendant's perjury related to the SUA and not the money laundering transactions *per se*).

— *United States v. Nolan-Cooper*, 957 F. Supp. 647 (E.D. Pa. 1997) (defendant's false testimony that she had sex with undercover agent during sting investigation was material and therefore triggered obstruction of justice enhancement), *remanded for resentencing on other grounds*, ___ F.3d ___, 1998 WL 554207 (3d Cir. Sept. 2, 1998).

T. Application of two-level enhancement in section 1957 cases:

— *United States v. Hawkey*, 148 F.3d 920 (8th Cir. 1998) (no double counting where defendant is both convicted of mail fraud and subject to two-level enhancement for knowing the property was SUA proceeds because such knowledge is not an element of section 1957; following *Hare*).

— *United States v. Hare*, 49 F.3d 447 (8th Cir. 1995) (since knowledge that property is SUA proceeds is *not* an element of a section 1957 offense, two-level enhancement when defendant has such knowledge is not double counting).

— *United States v. Lowder*, 5 F.3d 467 (10th Cir. 1993) (no double counting violation when defendant is both convicted of mail fraud and subjected to two-level enhancement of section 1957 sentence for knowing that property was proceeds of mail fraud); *United States v. Allen*, 129 F.3d 1159 (10th Cir. 1997) (same for sections 1957 and 513).

— *United States v. Lombardi*, 5 F.3d 568 (1st Cir. 1993) (two-level enhancement is virtually automatic where defendant committed the underlying SUA because he obviously knows the property is the proceeds of SUA; two-level enhancement *does not* require grouping of section 1957 offense with underlying offense under section 3D1.2(c) because knowledge of source of funds is not the same as committing the underlying act).

U. Restitution:

— *United States v. Neal*, 36 F.3d 1190 (1st Cir. 1994) (defendant could not be ordered to pay restitution for losses resulting from entire scheme because, notwithstanding 1990 amendment to VWPA, money laundering is not an offense that involves a scheme, conspiracy or pattern as an element).

— *United States v. Snider*, 957 F.2d 703, 707 (D.C. Cir. 1992) (no restitution in structuring case where offense committed before 1990 VWPA amendment).

2. Downward departure rejected:

— *United States v. Mankarious*, 151 F.3d 694 (7th Cir. 1998) (cashing or depositing check representing kickback from fraud scheme falls within heartland of money laundering offense).

— *United States v. Morris*, 18 F.3d 562 (8th Cir. 1994) (court may not depart downward to offense level for underlying SUA); *United States v. Adams*, 74 F.3d 1093 (11th Cir. 1996) (same; "departure that completely negates the effect of [the] money laundering convictions is clearly erroneous").

— *United States v. Rose*, 20 F.3d 367 (9th Cir. 1994) (no error in refusing to depart down to offense level for SUA); *United States v. Ripinsky*, 109 F.3d 1436 (9th Cir. 1997) (same; following *Rose*).

— *United States v. Piervinanzi*, 23 F.3d 670 (2d Cir. 1994) (appellate court will not review district court's determination that section 1956(a)(2)(A) offense was a "heartland" offense and that no downward departure was warranted).

— *United States v. Goff*, 20 F.3d 918 (8th Cir. 1994) (no downward departure for "relatively minor" offense if offense is not technical but is precisely the conduct the statute proscribes; distinguishing *Skinner*).

— *United States v. Hager*, 1995 WL 529647 (10th Cir. Sept. 8, 1995) (unpublished) (Congress requires that money laundering and the SUA be punished separately; court is required to use the money laundering guidelines, not the guideline for the SUA, where the offense level for money laundering is higher).

— *United States v. LeBlanc*, 24 F.3d 340 (1st Cir. 1994) (negotiation of checks representing proceeds of gambling is an offense separate from gambling falling in heartland of money laundering), *rev'g* 825 F. Supp. 422 (D. Mass. 1993) *and United States v. Weinstein*, 828 F. Supp. 3 (D. Mass. 1993).

— *United States v. Pierro*, 32 F.3d 611 (1st Cir. 1994) (laundering proceeds of ITSP offense with intent to promote underlying crime is "heartland" offense separate and distinct from the underlying crime for sentencing purposes).

— *United States v. Willey*, 57 F.3d 1374 (5th Cir. 1995) (offense is not outside the heartland just because the money laundering was a relatively minor part of defendant's overall criminal conduct).

— *United States v. Carter*, 1997 WL 297076 (E.D. Pa. May 22, 1997) (inept money launderer's lack of sophistication not ground for downward departure).

— *United States v. Jackson*, Civil No. 95-402-MA, Crim. No. 90-374-MA

5316 is lesser included offense of section 1956(a)(2)(B)(ii) under *Blockburger* where both offenses involve physical transportation of currency without filing a report).

D. Substantive money laundering and conspiracy:

— *United States v. Saccoccia*, 18 F.3d 795 (9th Cir. 1994) (no double jeopardy violation where defendant is convicted of overarching money laundering conspiracy and subsequently tried for substantive offenses; no double jeopardy violation where defendant is convicted of money laundering acts occurring at one time and place and subsequently prosecuted for other money laundering acts occurring at another time and place even though all acts were part of the same scheme).

E. Money laundering conspiracy and conspiracy to commit SUA:

— *United States v. Otis*, 127 F.3d 829 (9th Cir. 1997) (section 846 drug conspiracy and section 371 conspiracy to launder money satisfy *Blockburger*).

F. Money laundering and civil forfeiture:

— *United States v. Contreras*, 108 F.3d 1255 (10th Cir. 1997) (under *Ursery*, prior civil forfeiture does not bar subsequent criminal money laundering prosecution).

XXVIII. *Ex Post Facto*

— *United States v. Moore*, 27 F.3d 969, 976 (4th Cir. 1994) (no *ex post facto* violation where defendant prosecuted under section 1957 for conducting a transaction involving proceeds of SUA offense that occurred before 1986, as long as 1957 monetary transaction occurred after effective date of the statute).

XXIX. Extradition

— *United States v. Andonian*, 29 F.3d 1432 (9th Cir. 1994) (defendant may be tried on superseding indictment containing money laundering offenses not contained in original indictment that was basis for extradition where additional counts allege violations of same statute committed in same manner as part of same scheme as counts in original indictment).

— *United States v. Saccoccia*, 58 F.3d 754 (1st Cir. 1995) (evidence of CTR offenses may be admitted to prove money laundering, even if defendant was extradited only on the money laundering, and not on the CTR, offenses).

— *United States v. One 1989 Jaguar XJ6*, 1993 WL 157630 (N.D. Ill. May 13, 1993) (automobile used to drive to/from site of money laundering offense is not substantially connected).

— *But see United States v. One Parcel . . . 613 Warwick Road*, 1995 WL 214451 (E.D. Pa. Apr. 10, 1995) (denying motion to dismiss section 981 forfeiture of building where defendants met to plan to cash checks in violation of section 1957).

— *United States v. One 1986 Ford Pickup*, 56 F.3d 1181 (9th Cir. 1995) (drug case: vehicle used to distribute drug proceeds is substantially connected to drug sale that was completed before vehicle was involved).

b. But property used to help the launderer conceal or disguise the SUA proceeds, in violation of section 1956(a)(1)(B)(i), is involved in the offense:

i. Bank accounts:

— *United States v. Tencer*, 107 F.3d 1120 (5th Cir. 1997) (entire bank account balance is forfeitable even though less than half the balance was criminal proceeds if the purpose of the deposit was to conceal or disguise proceeds among legitimate funds).

— *United States v. Bornfield*, 145 F.3d 1123 (10th Cir. 1998) ("forfeiture of legitimate and illegitimate funds commingled in an account is proper as long as the Government demonstrates that the defendant pooled the funds to facilitate; *i.e.*, disguise the nature and source of, his scheme); *id.* (if money laundering offense consists of writing check on bank account, money remaining in the account is not the "corpus," but may be forfeitable as facilitating property).

— *United States v. Hawkey*, 148 F.3d 920, 928 n.13 (8th Cir. 1998) (dicta) (citing *Bornfield* with approval, and noting that in some instances it may be appropriate to order the forfeiture of an account containing commingled tainted and untainted funds).

— *United States v. Trost*, 152 F.3d 715 (7th Cir. 1998) (dicta) (legitimate funds may be forfeited if used to disguise illegitimate funds).

— *United States v. All Monies*, 754 F. Supp. 1467, 1475-76 (D. Haw. 1991) (untainted money in account provided "cover" for laundering operation); *United States v. Certain Funds on Deposit in Account No. 01-0-71417*, 769 F. Supp. 80, 84-85 (E.D.N.Y. 1991) (same); *United States v. Certain Accounts*, 795 F. Supp. 391, 397 (S.D. Fla. 1992).

involved in the money laundering transaction); *United States v. Abuhouran*, 1996 WL 451368 (E.D. Pa. Aug. 1, 1996) (same).

— *United States v. Beddow*, 957 F.2d 1330 (6th Cir. 1992), *reh'g en banc denied*, 1992 U.S. App. LEXIS 5051 (1992) (venue is proper in district where defendant committed the SUA and began movement of the money to the district where it was laundered).

C. Venue is proper in the district where the financial transaction occurred:

— *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (because the financial transaction includes "initiating, concluding, and participating in initiating or concluding" a transaction, venue was proper in district in which defendant traveled or made phone calls to arrange financial transaction).

— *United States v. Gilliam*, 975 F.2d 1050 (4th Cir. 1992) (purchase of land in Virginia puts venue in that state even though SUA occurred in Oregon and proceeds were put in bank in Tennessee).

D. Compound transactions:

— *Cf. United States v. Kramer*, 73 F.3d 1067 (11th Cir. 1996) (where defendant transferred funds between two foreign countries, the Government could not establish that transfer occurred in part in the United States by showing that funds originated in the United States because each transfer is a separate offense).

E. Reporting violations:

— *United States v. Clines*, 958 F.2d 578, 582 (4th Cir.), *cert. denied*, 505 U.S. 1205 (1992) (venue for failure to file FBAR is in *any* district, since form says report may be filed with any local IRS office).

F. Conspiracies:

— *United States v. Cabrales*, 1998 WL 274465 (June 1, 1998), ___ U.S. ___, 118 S. Ct.1772 (1998) (section 371 conspiracy to launder money may be prosecuted in the district where the SUA occurred if the agreement was reached in that district; substantive money laundering offense committed in another district may be alleged as an overt act).

— *United States v. Angotti*, 105 F.3d 539 (9th Cir. 1997) (venue for section 371 conspiracy to launder money lies in any district where an overt act in furtherance of the conspiracy took place).

— *United States v. Sonny Cook Motors*, 819 F. Supp. 1015, 1018 (N.D. Ala. 1993) (entire parcel of real property on which car dealership is located is "involved in" effort to launder money through the business in "sting" case).

— *United States v. Puello, supra*, 814 F. Supp. at 1160.

iv. Businesses:

— *United States v. All Assets of G.P.S. Automotive Corp.*, 66 F.3d 483, 487 (2d Cir. 1995) (business used to sell stolen auto parts and launder proceeds forfeited under section 981).

— *United States v. Swank Corp.*, 797 F. Supp. 497, 502 (E.D. Va. 1992) (proceeds of mail fraud scheme "cleared" through corporate bank accounts; if there is substantial connection between business and laundering activity, entire business and all of its assets are forfeited regardless of amount of money laundered).

— *United States v. Any and All Assets of Shane Co.*, 816 F. Supp. 389, 397 (M.D.N.C. 1991) (drug proceeds laundered through trucking business).

— *United States v. 155 Bemis Road*, 760 F. Supp. 245, 251 (D.N.H. 1991) (business forfeitable under section 981 because corporate checks were used to make drug trafficker's purchase and improvement of real property with drug money appear to be legitimate business activity).

— *United States v. South Side Finance, Inc., supra*, 755 F. Supp. at 797-98.

— *United States v. Shirk*, Crim. No. 1:CR-90-0294 (M.D. Pa. June 19, 1991) (forfeiture of business used as conduit for structuring violations).

— *United States v. Eleven Vehicles*, 836 F. Supp. 1147, 1155 (E.D. Pa. 1993) (officers of corporation participate in arms export conspiracy of which money laundering was integral part).

c. Property that facilitates *the SUA offense* may be "involved in" the money laundering offense:

— *United States v. $488,342.85*, 969 F.2d 474, 477 (7th Cir. 1992) (property "involved" in money laundering offense not limited to money derived from the SUA, but may include funds that facilitated the SUA).

D. Section 1956 does not violate substantive due process right to do business with whomever one pleases:

— *United States v. Antzoulatos*, 962 F.2d 720, 725 (7th Cir. 1992) (car dealer convicted of selling cars to drug dealers).

— *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (car dealer convicted under section 1956(a)(3) of attempting to sell car to undercover agents).

E. Section 1956(a)(3) not unconstitutional:

— *United States v. Jensen*, 69 F.3d 906 (8th Cir. 1995) ("fact that a crime can only be committed with the cooperation of a government actor is not constitutionally damning"; following *McLamb).*

— *United States v. McLamb*, 985 F.2d 1284, 1291 (4th Cir. 1993) (no vagueness violation; Congress' attempt to define "represented," while inartfully phrased, is meant merely to identify the persons authorized to make the representation).

— *United States v. McLamb*, 985 F.2d 1284 (4th Cir. 1993) (no due process violation; criminalization of car dealer's conduct has rational basis and legitimate law enforcement purpose of "eliminating money laundering activity by making it easier to ferret out").

— *United States v. Loehr*, 966 F.2d 201 (6th Cir. 1992) (because of specific intent requirement, sting statute not unconstitutionally vague as applied to someone not actively engaged in money laundering or drug dealing before the initiation of the sting operation); *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (same).

— *United States v. Twersky*, 1994 WL 319367 (S.D.N.Y. June 29, 1994) (no equal protection violation).

F. Section 1957 not unconstitutionally vague:

— *United States v. Baker*, 19 F.3d 605 (11th Cir. 1994) (defendant convicted of depositing funds derived from own fraud activity).

G. Phrase "involves the proceeds of" not unconstitutionally vague:

— *United States v. Jackson*, 983 F.2d 757 (7th Cir. 1993) ("involves" plainly means something less than "all").

— *United States v. Haun*, 90 F.3d 1096 (6th Cir. 1996) ("proceeds" has a commonly understood meaning; it includes "what is produced or derived from something by way of total revenue").

(combination of medical condition and familial obligations insufficient to take case out of the heartland).

— *United States v. Ellis*, 1997 WL 297080 (E.D. Pa. May 22, 1997) (same regarding family concerns).

E. Grouping:

1. Cases holding money laundering and SUA do not group:

— *United States v. O'Kane*, ___ F.3d ___, 1998 WL 568813 (8th Cir. Sept. 9, 1998) (grouping money laundering with underlying fraud would result in no punishment for the fraud; such grouping defeats the purpose of Part 3D "to provide incremental punishment for significant additional criminal conduct); *id.* (fraud against employer and laundering proceeds harm different victims and so do not group under 3D1.2(b); laundering harms society at large).

— *United States v. Porter*, 909 F.2d 789 (9th Cir. 1990) (money laundering and gambling SUA offenses not so closely related that they must be combined under section 3D1.2(d)); *see also United States v. Johnson*, 971 F.2d 562 (10th Cir. 1992).

— *United States v. McMahon*, 1997 WL 794129 (4th Cir. Dec. 30, 1997) (unpublished) (where money laundering offense, though effective at concealing fraud, does not promote or perpetuate the fraud, grouping with the SUA under section 3D1.2(d) is not appropriate; following *Porter* and distinguishing *U.S. v. Walker, infra*).

— *United States v. Kunzman*, 54 F.3d 1522 (10th Cir. 1995) (money laundering and securities fraud don't involve same victims under section 3D1.2(b)).

— *United States v. Hargus*, 129 F.3d 1159 (10th Cir. 1997) (money laundering and mail fraud not grouped under section 3D1.2(d); following *Johnson* and *Kunzman*); *United States v. Allen*, 129 F.3d 1159 (10th Cir. 1997) (same for sections 1957 and 513).

— *United States v. Harper*, 972 F.2d 321 (11th Cir. 1992) (money laundering and drug offenses should not be grouped under section 3D1.2(d); money laundering and drug trafficking "are not crimes of the same general type'"); *United States v. Gallo*, 927 F.2d 815, 824 (5th Cir. 1991) (same); *see also United States v. Lopez*, 104 F.3d 1149 (9th Cir. 1997) (Fernandez, J., dissenting).

— *United States v. Taylor*, 984 F.2d 298 (9th Cir. 1993) (money laundering and underlying wire fraud offenses do not group under section 3D because harm is measured differently; therefore, amount involved in dismissed wire fraud count is

B. Bank records:

— *United States v. Johnson*, 971 F.2d 562 (10th Cir. 1992) (records of wire transfers into customers' accounts admitted through customers' testimonies; not necessary to call bank records custodian to authenticate records).

— *United States v. Gonzalez*, 90 F.3d 1363 (8th Cir. 1996) (information provided by customer on money transfer application admissible as admission of party opponent if applications were linked to defendant or coconspirators).

— *United States v. Cestnik*, 36 F.3d 904 (10th Cir. 1994) (information provided by customer to money transmitter is hearsay not admissible under business record exception unless business verified the information); *United States v. Arteaga*, 117 F.3d 388 (9th Cir. 1997) (same).

— *United States v. Cestnik*, 36 F.3d 904 (10th Cir. 1994) (customer-supplied information; *i.e.* name of sender, was non-hearsay where it was admitted not to establish the truth of the info, but to show that the defendant had sent the money using aliases).

— *United States v. Arteaga*, 117 F.3d 388 (9th Cir.1997) (customer-provided information on wire-transmission record not hearsay if record was found in defendant's possession and is admitted to show he had knowledge of an alias, thus linking him to a money laundering conspiracy).

C. Summary chart:

— *United States v. Grajales-Montoya*, 117 F.3d 356(8th Cir. 1997) (it was error to admit chart summarizing chronology of financial transactions where transactions were already in evidence, chart was prepared by prosecutor, and person who prepared chart was not available for cross-examination; but error was harmless).

D. Expert testimony:

— *United States v. Barber*, 80 F.3d 964 (4th Cir. 1996) (*en banc*) (an IRS agent testifies how depositing cash and then withdrawing cash serves to conceal or disguise drug money).

— *United States v. Saccoccia*, 58 F.3d 754 (1st Cir. 1995) (expert testimony established how typical Colombian drug cartel launders money).

— *United States v. Posters 'N' Things Ltd.*, 969 F.2d 652, 661 n.6 (8th Cir. 1992) (expert witness allowed to testify that transaction affected interstate commerce, that bank was a financial institution, and that acts constituted "concealment" under section 1956(a)(1)(B)(i)), *aff'd*, 511 U.S. 513 (1994).

scheme against same victim); *United States v. Leonard*, 61 F.3d 1181, 1186 (5th Cir. 1995) (same).

3. Grouping money laundering counts with each other:

— *United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995) (when defendant is convicted on count alleging multiple intents under (A)(i) and (B)(i), higher offense level for (A)(i) controls; when defendant is convicted of 1956 and 1957 counts, offenses are grouped and higher level applies).

— *United States v. Brace*, 145 F.3d 247 (5th Cir. 1998) (*en banc*) (substantive counts, and section 1956(h) conspiracy count, properly grouped under section 3D1.2).

— *United States v. Nattier*, 127 F.3d 655 (8th Cir. 1997) (substantive money laundering and section 371 conspiracy properly grouped together).

— *United States v. Nolan-Cooper*, 957 F. Supp. 647 (E.D. Pa.1997) (section 1956(h) conspiracy and substantive counts grouped together), *remanded for resentencing on other grounds*, ___ F.3d ___, 1998 WL 554207 (3d Cir. Sept. 2, 1998).

4. Grouping money laundering counts with other offenses:

— *United States v. Maggi*, 44 F.3d 478 (7th Cir. 1995) (money laundering properly grouped with obstruction of justice count because money laundering with intent to conceal or disguise embodies elements of obstruction).

— *United States v. Coscarelli*, 105 F.3d 984 (5th Cir.), *aff'd en banc*, 149 F.3d 342 (5th Cir. 1998) (conspiracy to launder money is properly grouped with conspiracy to commit fraud because the offense levels for each offense will be determined by the amount of loss under section 3D1.2(d)).

5. Section 2255 challenge to grouping:

— *United States v. Glover*, 1998 WL 611451 (N.D. Ill. 1998) (error in grouping money laundering with other offenses not sufficient basis for section 2255 challenge where error resulted in difference of only two offense levels and slightly longer sentence).

F. Double counting:

— *United States v. Allen*, 129 F.3d 1159 (10th Cir. 1997) (no double counting where same conduct was basis for section 1957 offense and "more than minimal planning" enhancement in sentence for the underlying SUA).

I. Rule 403:

— *United States v. Laureano*, 1998 WL 696006 (S.D.N.Y. 1998) (defendant's prior business contacts with known drug dealer admissible to show knowledge, and no so prejudicial as to require exclusion under Rule 403).

fraud proceeds, laundered all of it, but was charged only with laundering $275,000, all $2 million properly considered in computing offense level); *United States v. Kunzman*, 54 F.3d 1522 (10th Cir. 1995) (same); *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (same).

— *United States v. Barton*, 32 F.3d 61 (4th Cir. 1994) (in sting case, amount involved is the amount the defendant believes to be involved, not the amount of "flash" money actually present).

— *United States v. Lowder*, 5 F.3d 467 (10th Cir. 1993) (sentence is based on total amount involved in laundering transaction, not net loss); *United States v. Thompson*, 40 F.3d 48 (3d Cir. 1994) (same); *United States v. Ripinsky*, 109 F.3d 1436 (9th Cir. 1997) (same).

— *United States v. Tencer*, 107 F.3d 1120 (5th Cir. 1997) (even though commingled money is forfeitable as property "involved" in the money laundering offense, the court has discretion not to include the untainted funds in the sentencing calculation).

— *United States v. Li*, 973 F. Supp. 567 (E.D. Va. 1997) (court may count the same money each time it is transferred, even if that results in double or triple counting; rejecting argument that sentencing calculation is limited to the amount defendant infused into the scheme).

2. Amount involved in underlying SUA may be used to calculate sentence:

— *United States v. Sokolow*, 81 F.3d 397 (3d Cir. 1996) (amount involved in the money laundering offense includes the amount derived from the entire fraud scheme, not just the amount charged in the money laundering counts).

— *United States v. Mullens*, 65 F.3d 1560 (11th Cir. 1995) (where money laundering and SUA offenses were properly grouped under 3D1.2(d), total amount involved in the SUA may be used as the amount intended to be laundered).

— *United States v. Leahy*, 82 F.3d 624 (5th Cir. 1996) (where defendant launders proceeds of fraud, amount for sentencing purposes is the gross proceeds of the fraud, not the net profit; following *Tansley*).

— *United States v. Tansley*, 986 F.2d 880 (5th Cir. 1993) (where money derived from a telemarketing scheme is put into a bank account with intent that it be laundered, but only a fraction is actually withdrawn, the larger amount that was intended to be laundered is used for sentencing purposes; "[f]unds under negotiation in a laundering transaction are properly considered in the calculation of a sentence").

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amount came from aspect of underlying SUA with which defendant was minimally involved).

— *United States v. Fuller*, 974 F.2d 1474 (5th Cir. 1992) (in sting case, sentencing enhancement may be based on what court concludes defendant was "reasonably capable" of laundering; enhancement applicable to amounts in excess of $2 million appropriate even though agents gave defendant only $97,000).

4. Effect of jury's determination of amount involved for forfeiture purposes:

— *United States v. Hildebrand*, 152 F.3d 756 (8th Cir. 1998) (district court is not bound by jury's forfeiture verdict in calculating amount laundered for sentencing purposes).

J. Sentencing manipulation/entrapment:

— *United States v. Connell*, 960 F.2d 191, 194 (1st Cir. 1992) (agent in section 5324 sting case, who gratuitously told defendant that money being structured was drug money, did not improperly manipulate defendant into sentencing enhancement; defendant had ample opportunity to consider the new information and bow out of the scheme)

— *United States v. Knecht*, 55 F.3d 54 (2d Cir. 1995) (no sentencing entrapment where a government agent says sting money is drug proceeds and sentencing enhancement results).

— *United States v. Brace*, 145 F.3d 247 (5th Cir. 1998) (*en banc*) (district court did not error in declining downward departure on the ground that undercover agent in sting case waited until defendant had laundered additional amounts before making the arrest).

— *United States v. Nolan-Cooper*, 957 F. Supp. 647 (E.D. Pa.1997) (the Government's ability to set amount of money to be laundered in a sting case does not imply sentencing entrapment where defendant agreed to, and did in fact, launder that amount), *remanded for resentencing on other grounds*, ___ F.3d ___, 1998 WL 554207 (3d Cir. Sept. 2, 1998).

— *United States v. Dos Santos*, 979 F. Supp. 949 (E.D.N.Y. 1997) (no improper sentencing manipulation to wait for defendant to launder $100,000 instead of arresting him after he laundered the first $35,000).

K. Consecutive sentences:

— *United States v. Maggi*, 44 F.3d 478 (7th Cir. 1995) (where guideline sentence for money laundering conspiracy exceeds the statutory maximum, sentences for money laundering and other offenses in indictment may be made consecutive under 5G1.2(d)).

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United States v. Barton, 32 F.3d 61 (4th Cir. 1994) (same); *United States v. McLamb*, 1996 WL 79438 (4th Cir. Feb. 26, 1996) (unpublished) (same; following *Barton*).

N. Special skill/position of trust:

— *United States v. Colozza*, 125 F.3d 687 (9th Cir. 1997) (defendant who abuses position of trust to defraud victims, and then launders the fraud proceeds, cannot argue that sentencing enhancement applies just to the mail fraud and not to the money laundering. it applies to both).

— *United States v. Sokolow*, 81 F.3d 397 (3d Cir. 1996) (CEO and president of insurance company abused position of trust when he committed money laundering offense).

— *United States v. Connell*, 960 F.2d 191, 198 (1st Cir. 1992) (stockbroker convicted of structuring offense subject to sentencing enhancement for abuse of special skill).

— *United States v. Morris*, 18 F.3d 562 (8th Cir. 1994) (chief financial officer of bank is in position of trust).

— *United States v. Ellis*, 1997 WL 297080 (E.D. Pa. May 22, 1997) (defendant's special skill as accountant made it more likely money laundering scheme would succeed).

— *United States v. Nolan-Cooper*, 957 F. Supp. 647 (E.D. Pa. 1997) (lawyer who helps undercover agent set up business to launder "sting" money is subject to special skill enhancement), *remanded for resentencing on other grounds*, ___ F.3d ___, 1998 WL 554207 (3d Cir. Sept. 2, 1998).

— *But see United States v. Wadena*, 152 F.3d 831 (8th Cir. 1998) (abuse of position enhancement not appropriate where there was no evidence that defendant used his position as tribal council official to commit section 1957 offense involving bribe proceeds).

— *United States v. Ferrouillet*, 1997 WL 266627 (E.D. La. May 20, 1997) (defendant did not use his special skill as a lawyer when he cashed a check and deposited the proceeds in several banks), *aff'd sub nom. United States v. Hemmingson*, ___ F.3d ___, 1998 WL 671376 (5th Cir. Sept. 30, 1998) (mere status as attorney does not justify special skill enhancement).

O. Acceptance of responsibility:

— *United States v. Walker*, 112 F.3d 163 (4th Cir. 1997) (defendant, who agreed to assist the Government in recovering his assets for restitution but instead dissipated his assets, not entitled to acceptance of responsibility adjustment).

— *United States v. Saccoccia*, 823 F. Supp. 994 (D.R.I. 1993) (exception not applicable where alleged intermediary was a smurf who was convicted under 31 U.S.C. § 5322(b) for having laundered more than $100,000 in more than three transactions; leaders of professional money laundering operation are clearly not intermediaries), *aff'd*, 58 F.3d 754 (1st Cir. 1995), *aff'd sub. nom. United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995).

— *United States v. Bornfield*, 145 F.3d 1123 (10th Cir. 1998) (dicta) (accountant who gave client check in exchange for cash drug proceeds was probably a mere intermediary).

— *See generally* Criminal Forfeiture Case Outline.

VIII. Excessive Fines

A. CMIR forfeitures:

— *United States v. Bajakajian*, ___ U.S. ___, 118 S. Ct. 2028 (1998) (forfeiture of the entire amount of unreported declared currency would be grossly disproportional to the gravity of the offense in violation of the Eighth Amendment, unless the money was involved in the commission of another offense), *aff'g* 84 F.3d 334 (9th Cir. 1996).

— *United States v. $69,292.00 in U.S. Currency*, 62 F.3d 1161 (9th Cir. 1995) (forfeiture of undeclared funds under section 5317 triggers Eighth Amendment analysis).

B. CTR forfeitures:

— *United States v. Funds in the Amount of $170,926.00*, 985 F. Supp. 810 (N.D. Ill. 1997) (pre-*Bajakajian* decision rejecting motion to dismiss complaint on ground that forfeiture of structured funds not derived from illegal source was *per se* unconstitutional).

C. Sections 1956 and 1957 forfeitures:

— *United States v. Ladum*, 141 F.3d 1328 (9th Cir. 1998) (forfeiture of laundered proceeds of bankruptcy fraud not excessive because forfeiture deprives defendant of property he had no right to retain anyway).

— *United States v. Tencer*, 107 F.3d 1120 (5th Cir. 1997) (application of facilitation theory to money laundering forfeiture does not lead to imposition of excessive fine, where amount forfeited ($1 million) included $450,000 in fraud proceeds and the balance in untainted funds).

— *United States v. Hargus*, 128 F.3d 1358 (10th Cir. 1997) (district court properly increased offense level to reflect money in addition to the amount defendant was convicted of laundering. section 1B1.3—relevant conduct—applies).

— *See* "amount of money involved in the scheme," at page 86.

R. Application of "drug" enhancement:

— *United States v. Long*, 977 F.2d 1264, 1277 (8th Cir. 1992) (three-level enhancement under section 2S1.1(b) for defendant who knew money was drug proceeds is not improper double counting).

— *United States v. Wisniewski*, 121 F.3d 54 (2d Cir. 1997) (three-level enhancement applies if defendant knew *any* of the funds he laundered were drug proceeds; there is no "significant portion" requirement).

— *United States v. Carr*, 25 F.3d 1194 (3d Cir. 1994) (three-level enhancement based on circumstantial evidence of defendant's knowledge)

— *United States v. Berrio*, 77 F.3d 206 (7th Cir. 1996) (rejecting argument that three-level enhancement based on defendant's "belief" applies only to sting cases. enhancement may be applied in (a)(1) cases if court finds defendant believed property was drug proceeds).

— *United States v. Gamez*, 1 F. Supp. 2d 176 (E.D.N.Y. 1998) (three-level enhancement may be based on "conscious avoidance" of knowledge, but knowledge that money came from Colombia not enough to support finding of conscious avoidance).

— *United States v. Blarek*, 7 F. Supp. 2d 192 (E.D.N.Y. 1998) (three-level enhancement may be based on conscious avoidance of knowledge).

S. Application of obstruction of justice enhancement:

— *United States v. Nesbitt*, 90 F.3d 164 (6th Cir. 1996) (impeding civil forfeiture of car may be considered obstruction of the underlying money laundering investigation for purposes of the sentencing enhancement).

— *United States v. Maggi*, 44 F.3d 478 (7th Cir. 1995) (two-point enhancement for obstruction does not involve double counting even though defendant also convicted of obstruction, because obstruction and money laundering counts were grouped under 3D1.2(c), and therefore obstruction, which had lower offense level, did not contribute to the sentence).

— *United States v. Tencer*, 107 F.3d 1120 (5th Cir. 1997) (destruction of records subpoenaed by grand jury supports two-level enhancement for obstruction).

1995 WL 381659 (D. Mass. June 16, 1995) (wealthy Colombian who purchased 182 dollar-denominated money orders totaling $100,000 was innocent owner because he did not recognize structured nature of instruments; no duty to inquire as to source of the money).

D. *Calero-Toledo* standard in section 5317 cases:

— *United States v. $69,292.00 in U.S. Currency*, 62 F.3d 1161 (9th Cir. 1995) (even though section 5317 does not contain an innocent owner provision, owner who took all reasonable steps to prevent illegal use may defeat forfeiture).

— *But see United States v. $124,813 in U.S. Currency*, 53 F.3d 108 (5th Cir. 1995) (*Calero-Toledo* did not create a general innocent owner defense applicable to section 5317 forfeitures).

— *United States v. $83,132.00 in United States Currency*, 1996 WL 599725 (E.D.N.Y. Oct. 11, 1996) (under *Bennis*, there is no innocent owner defense in CMIR cases).

E. Black market cases:

— *United States v. Basler Turbo-67*, 906 F. Supp. 1332 (D. Ariz. 1995) (person who knows property was purchased with funds traceable to the black market in Colombia is not an innocent owner; that black market funds come from drug dealing is common knowledge in that country).

F. Willful blindness:

— *United States v. Real Property 874 Gartel Drive*, 79 F.3d 918 (9th Cir. 1996) (willful blindness is the same as "knowledge" under section 981(a)(2)).

— *United States v. All Monies*, 754 F. Supp. 1467, 1478 (D. Haw. 1991) (claimant must prove "that he did not know of the illegal activity, did not willfully blind himself to the illegal activity, and did all that reasonably could be expected to prevent the illegal use" of his property); *United States v. All Funds Presently on Deposit at American Express Bank*, 832 F. Supp. 542 (E.D.N.Y. 1993) (same).

VII. Criminal Forfeiture

A. Criminal forfeiture is a sentencing issue:

— *United States v. Bornfield*, 145 F.3d 1123 (10th Cir. 1998) (citing *Libretti*).

V. Fines:

— *United States v. Carr*, 25 F.3d 1194 (3d Cir. 1994) (court need not waive minimum fine if it determines defendant has *future* ability to pay).

XXVII. Double Jeopardy

A. Money laundering and the SUA:

— *United States v. Edgmon*, 952 F.2d 1206 (10th Cir. 1991) (separate punishment for SUA and money laundering analogous to separate punishment for CCE offense and underlying drug predicate), *cert. denied*, 505 U.S. 1223 (1992).

— *United States v. Lovett*, 964 F.2d 1029, 1041-43 (10th Cir. 1992) (no double jeopardy violation where defendant punished separately for section 1957 violation and underlying SUA); *United States v. Hollis*, 971 F.2d 1441 (10th Cir. 1992) (same. deposit of checks did not constitute any element of underlying SUA offense); *United States v. Farr*, 1995 WL 638249 (9th Cir. Oct. 30, 1995) (unpublished) (defendant may be convicted of bank fraud and money laundering is same indictment).

— *United States v. Brown*, 31 F.3d 484, 496 n.20 (7th Cir. 1994) (separate prosecutions for money laundering and SUA do not violate double jeopardy, even though *Blockburger* test is not satisfied, because Congress clearly contemplated different types of offense conduct in enacting the two provisions).

— *United States v. Conley*, 37 F.3d 970, 975 n.15 (3d Cir. 1994) (money laundering and SUA are not the same offense under *Blockburger*).

B. Money laundering and structuring:

— *United States v. Jackson*, 983 F.2d 757, 769 (7th Cir. 1993) (no double jeopardy problem where defendant receives consecutive sentences for structuring and for violation of section 1956(a)(1)(B)(i) and (ii) for buying car with structured checks).

C. Money laundering and CMIR offense:

— *United States v. Ortiz*, 738 F. Supp. 1394, 1403 (S.D. Fla. 1990) (sections 1956(a)(2)(B)(ii) and 5316 are separate offenses under *Blockburger* because former can be violated by wire transfer whereas latter requires physical transportation).

— *United States v. Yuzary*, 1997 WL 234674 (2d Cir. Apr. 8, 1997) (unpublished) (section 5316 CMIR offense and section 1956(a)(2)(B)(i) satisfy *Blockburger*); *but see United States v. Yuzary*, 1997 WL 76523 (S.D.N.Y. Feb. 24, 1997) (section

3. Interbank account exception:

   — Foreign bank not entitled to interbank account exception in section 984(d) if employees knew of the illegal scheme. *United States v. $814,254.76 in U.S. Currency*, No. CIV 92-659 TUC ACM (D. Ariz. Jan. 10, 1994) (unpublished), *rev'd on other grounds*, 51 F.3d 207 (9th Cir. 1995).

   — Foreign bank not entitled to interbank account exception where the Government seeks forfeiture of property directly traceable to the offense, not fungible property; *Marine Midland Bank, N.A. v. United States*, 1994 WL 381536 (S.D.N.Y. July 20, 1994), *renewed motion for return of funds denied*, 1995 WL 450483 (S.D.N.Y. Jul. 31, 1995).

   — *United States v. All Funds on Deposit . . . in the Name of Perusa, Inc.*, 935 F. Supp. 208 (E.D.N.Y. 1996) (money transmitter is not a financial institution for purposes of section 984(d); definition in 18 U.S.C. § 20, not 31 U.S.C. § 5312, applies).

4. Section 984 does not apply retroactively:

   — *United States v. $814,254.76 in U.S. Currency*, 51 F.3d 207 (9th Cir. 1995).

   — *United States v. Contents of Account Numbers 208-06070*, 847 F. Supp. 329 (S.D.N.Y. 1994).

V. Establishing Basis for Forfeiture in Other Cases

A. FIRREA cases:

Property traceable to proceeds of bank fraud offense.

— *United States v. Real Property 874 Gartel Drive*, 79 F.3d 918 (9th Cir. 1996) (forfeiture of real property purchased with proceeds of section1014 violation).

B. Intangible property:

Electronic funds exist as a credit at the intermediate bank used in a wire transfer, and constitute a *res* that may be seized from the intermediate bank.

— *United States v. Daccarett*, 6 F.3d 37 (2d Cir. 1993).

— *United States v. Jurado-Rodriguez*, 907 F. Supp. 568 (E.D.N.Y. 1995) (the Government may not prosecute defendant for money laundering offense for which he has already been prosecuted under foreign law where extradition treaty precludes second prosecution based on same material facts).

— *United States v. Bakhtiar*, 964 F. Supp. 112 (S.D.N.Y. 1997) (because, under terms of extradition from Switzerland, defendant could not be prosecuted for money laundering, offense level for money laundering may not be used in computing sentence for section 371 conspiracy that included money laundering as an object).

XXX. Extraterritorial Jurisdiction

— *United States v. Stein*, 1994 WL 285020 (E.D. La. June 23, 1994) (the United States has jurisdiction over foreign persons who remain abroad but order initiation of wire transfer from the United States).

XXXI. Venue

A. Substantive money laundering offense may be prosecuted in any district where the financial transaction occurred, but *not* in the district where only the SUA occurred:

— *United States v. Cabrales*, 1998 WL 274465 (June 1, 1998), ___ U.S. ___, 118 S. Ct. 1772 (1998) (defendant who conducted financial transactions in Florida, and who had no role in transporting the SUA proceeds from Missouri to Florida, could not be prosecuted in Missouri, even though SUA offense was committed there).

— *United States v. Knight*, 822 F. Supp. 1071 (S.D.N.Y. 1993) (where section 1957 offense occurs entirely in W.D. Mo., venue is proper only in that district, not in S.D.N.Y. where SUA occurred).

B. Money laundering can be prosecuted in the district where the SUA occurred if the defendant moved the proceeds from that district to the district where the financial transaction occurred:

— *United States v. Cabrales*, 1998 WL 274465 (June 1, 1998), ___ U.S. ___, 118 S. Ct. 1772 (1998) ("money laundering . . . arguably might rank as a 'continuing offense,' triable in more than one place, if the launderer acquired the funds in one district and transported them into another district").

— *United States v. Angotti*, 105 F.3d 539 (9th Cir. 1997) (venue is proper where defendant committed the SUA because that is where defendant obtained the money

1992); *United States v. All Funds Presently on Deposit at American Express Bank*, 2832 F. Supp. 542, 562 (E.D.N.Y. 1993).

— *United States v. Bornfield*, 145 F.3d 1123 (10th Cir.1998) (following *$488,342.85*; account number is used for identification purposes and is not itself a forfeitable item).

B. Forfeiture of entire account may be based on circumstantial evidence:

— *United States v. Certain Accounts*, 795 F. Supp. 391, 397 (S.D. Fla. 1992) (deposit of numerous money orders in amounts just under $10,000 into an account sufficient to establish probable cause for forfeiture of entire account even though balance exceeded total value of money orders).

— *United States v. U.S. Currency ($199,710.00)*, 96 CV 2241 (ERK) (RML) (E.D.N.Y. Mar. 20, 1998) (if the Government has probable cause to believe that a bank account is used exclusively for money laundering, it does not have to establish a separate money laundering nexus for each deposit into the account).

C. If probable cause cannot be established by circumstantial evidence or facilitation theory, the Government must trace money to offense giving rise to forfeiture:

— *United States v. Banco Cafetero Panama*, 797 F.2d 1154, 1158-62 (2d Cir. 1986) (drug case: the Government is entitled to use "first in, first out" or "first in, last out" analysis in tracing tainted funds through volatile bank account, but the Government is subject to the "lowest intermediate balance" rule).

— *United States v. $488,342.85*, 969 F.2d 474, 476-77 (7th Cir. 1992) (section 981 case discussing application of *Banco Cafetero* to money laundering; strict tracing, such as employed in the law of trusts, not required in civil forfeiture cases).

D. In civil cases, tracing the seized property to criminal activity is part of the Government's probable cause burden:

— *Marine Midland Bank, N.A. v. United States*, 11 F.3d 1119 (2d Cir. 1993) (failure of the Government to establish probable cause to seize entire account at time of seizure results in return of property pretrial).

— *United States v. All Funds Presently on Deposit at American Express Bank*, 832 F. Supp. 542 (E.D.N.Y. 1993) ("probable cause to seize and forfeit an active bank account . . . requires that the funds in that account be somehow 'traceable' to the alleged unlawful activity that gave rise to the forfeiture in the first place").

— *United States v. All Funds on Deposit (Great Eastern Bank)*, 804 F. Supp. 444, 446 (E.D.N.Y. 1992) (the Government must establish probable cause with respect to *all* of

G. Burden of proof:

— *United States v. Sax*, 39 F.3d 1380 (7th Cir. 1994) (venue is not an essential element, the Government is required to establish venue by preponderance of the evidence).

H. Manufactured venue:

— *United States v. Spriggs*, 102 F.3d 1245 (D.C. Cir. 1996) (the Government did not improperly manufacture venue in D.C. when an undercover agent in sting case asked Maryland car dealer to pick up "drug proceeds" in D.C.).

XXXII. Constitutionality

A. Knowledge requirement not unconstitutionally vague or overbroad:

— *United States v. Long*, 977 F.2d 1264, 1274 (8th Cir. 1992); *United States v. Antzoulatos*, 962 F.2d 720, 727 (7th Cir. 1992); *United States v. Gleave*, 786 F. Supp. 258, 267-70 (W.D.N.Y. 1992).

— *United States v. Finn*, 919 F. Supp. 1305 (D. Minn. 1995) (knowledge requirement in section 1957 is not vague).

B. Section 1956(a)(1), (2), and (3) is not unconstitutionally vague; proof of scienter plainly required:

— *United States v. Cavalier*, 17 F.3d 90, 93 n.5 (5th Cir. 1994); *United States v. Awan*, 966 F.2d 1415 (11th Cir. 1992); *United States v. Sierra-Garcia*, 760 F. Supp. 252, 259 (E.D.N.Y. 1991); *United States v. Ortiz*, 738 F. Supp. 1394, 1401 (S.D. Fla. 1990); *see* "sting" cases, *infra*.

C. Section 1956(a)(1)(B)(i) and (ii) not unconstitutionally vague because the Government has to prove specific intent to conceal or disguise or to evade reporting requirements:

— *United States v. Gilliam*, 975 F.2d 1050 (4th Cir. 1992) (defendant is perpetrator of underlying offense).

— *United States v. Jackson*, 983 F.2d 757 (7th Cir. 1993) (noting presence of knowledge and intent elements).

— *United States v. Bulei*, 1998 WL 544958 (E.D. Pa. 1998) (section 1956(a)(1)(B)(ii) not unconstitutionally vague; following *Jackson*).

II. Jury Instructions

A. Property involved in the offense:

— *United States v. Bornfield*, 145 F.3d 1123 (10th Cir. 1998) (preferable that court define "involved in" as including the corpus, commissions, and facilitating property, but no reversible error if court fails to do so).

III. Establishing Basis for Civil Forfeiture in Money Laundering Cases

A. Substantive elements:

— *United States v. One 1988 Prevost Liberty Motor Home*, 952 F. Supp. 1180 (S.D. Tex. 1996) (the Government must establish only probable cause to believe money laundering offense and underlying SUA were committed, and that defendant property was involved).

— *United States v. One 1986 Mercedes Benz*, 1996 WL 208493 (D. Mass. Mar. 6, 1996) (absence of legitimate income during time of purchase, and record of arrests for possession of stolen credit cards and stolen mail, sufficient to establish probable cause to believe car was purchased with SUA proceeds in violation of section 1956).

— *United States v. Funds Held in the Name of Wetterer*, ___ F. Supp. 2d ___, 1998 WL 692423 (E.D.N.Y. Sept. 30, 1998) (the Government establishes probable cause to believe mail fraud occurred, proceeds were laundered, and defendant funds were the laundered proceeds).

B. Probable cause must encompass both the prohibited conduct and the mental state required by the relevant statute:

— *United States v. Dollar Bank Money Market Account*, 980 F.2d 233 (3d Cir. 1992) (in structuring case, the Government must have probable cause to believe that property was involved in structured transactions committed with intent to evade federal reporting requirements); *United States v. $200,000*, 805 F. Supp. 585, 590 n.12 (N.D. Ill. 1992) (same).

— *United States v. Leak*, 123 F.3d 787 (4th Cir. 1997) (summary judgment for the Government inappropriate where claimant raises material issue of fact regarding his mental state in committing structuring offense).

— *Marine Midland Bank, N.A. v. United States*, 1994 WL 381536 (S.D.N.Y. July 20, 1994) (willfulness requirement in *Ratzlaf* not applicable to civil forfeiture).

H. Commerce Clause:

— *United States v. Goodwin*, 141 F.3d 394 (2d Cir. 1997) (Congress may properly regulate money laundering under the Commerce Clause; distinguishing *Lopez*).

— *See* "interstate commerce" cases at page 7.

XXXIII. Department of Justice Guidelines

Guidelines in the *U.S. Attorneys' Manual* convey no substantive rights on defendants.

— *United States v. Piervinanzi*, 23 F.3d 670 (2d Cir. 1994) ("blue sheet" requiring consultation on cases containing "merger" issue does not preclude prosecution).

XXXIV. Authority to Investigate

Section 1957(e), authorizing investigations by the Department of Justice, the Department of the Treasury, and the U.S. Postal Inspection Service, does not limit grand jury's right to return an indictment based on investigation conducted by another agency.

— *United States v. Finn*, 919 F. Supp. 1305 (D. Minn. 1995) (investigation by the Department of the Interior).

XXXV. Use of Search Warrant

— *United States v. Hunter*, ___ F. Supp. ___, 1998 WL 353853 (D. Vt. June 10, 1998) (the Government may search attorneys' offices and seize computer equipment with search warrant if there is probable cause evidence of money laundering will be found).

XXXVI. Admissibility of Evidence

A. Other transactions:

— *United States v. Dillman*, 15 F.3d 384 (5th Cir. 1994) (evidence of transactions other than those charged as money laundering offenses admissible to allow jury to see the entire scheme and its results).

— *United States v. Eleven Vehicles*, 836 F. Supp. 1147, 1155 (E.D. Pa. 1993) (where business was forfeitable as facilitating property, salaries paid by business, and property purchased with salaries, were proceeds traceable to forfeitable property and were forfeitable even though the Government did not seek forfeiture of business itself).

— *United States v. 1990 Chevrolet Silverado Pickup*, 804 F. Supp. 777 (W.D.N.C. 1992) (truck traceable to earlier truck purchased with gambling proceeds is forfeitable as property traceable to property "involved in" section 1956 violation).

— *United States v. 1988 Oldsmobile Cutlass Supreme*, 983 F.2d 670 (5th Cir. 1993) (cars purchased with cashiers checks acquired in structured transaction); *United States v. Rogers*, 1996 WL 252659 (N.D.N.Y. May 8, 1996) (same).

— *United States v. Contents of Account Numbers 208-06070*, 847 F. Supp. 329 (S.D.N.Y. 1994) (bank account that contains only funds transferred from account forfeitable as facilitating property is itself forfeitable).

— *But see United States v. Voight*, 89 F.3d 1050 (3d Cir. 1996) (property purchased with laundered money is forfeitable as property "traceable to," but property purchased with funds from an account into which laundered money and clean money have been commingled is not "traceable to").

Note: This case does not address the question whether the purchase of property from an account containing commingled funds is itself a money laundering offense subjecting the purchased property to forfeiture.

— *See also United States v. Bornfield*, 145 F.3d 1123 (10th Cir. 1998) (discussing distinction between "traceable property" and "facilitating property"; the former is "traceable" to the offense; the latter is "involved in" the offense).

F. Forfeiture of laundered funds under RICO:

Where pattern of racketeering consists of money laundering offenses, money being laundered is considered "proceeds" of RICO offense for purpose of forfeiture.

— *United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995) (money launderer "obtains proceeds" subject to forfeiture under section 1963(a)(3) when he takes temporary possession of property and passes it on to someone else).

— *United States v. Saccoccia*, 823 F. Supp. 994 (D.R.I. 1993), *aff'd*, 58 F.3d 754 (1st Cir. 1995).

— *United States v. Oreira*, 29 F.3d 185 (5th Cir. 1994) (expert permitted to testify as to how a "giro house" operates).

— *United States v. Willey*, 57 F.3d 1374 (5th Cir. 1995) (expert can testify that effect of transaction was to conceal, but he cannot testify that defendant's intent was to conceal).

— *United States v. Gonzalez*, 90 F.3d 1363 (8th Cir. 1996) (expert testifies as to how use of Western Union to transmit money is fits in with money laundering scheme).

— *United States v. Spriggs*, 102 F.3d 1245 (D.C. Cir. 1996) (in sting case, expert permitted to testify regarding conduct of drug business to aid jury in understanding jargon used on audio tapes).

— *United States v. Ly*, 141 F.3d 1181 (9th Cir. 1998) (Table) (expert explains how casino games operate and significance of otherwise innocent-looking behavior).

E. Agent's testimony:

— *United States v. Awan*, 966 F.2d 1415 (11th Cir. 1992) (agent allowed to explain ambiguous references made by defendant in undercover recorded conversation where agent was present during conversation and explanation is necessary to make intricacies of money laundering scheme understandable to jury).

— *United States v. Fuller*, 974 F.2d 1474 (5th Cir. 1992) (agent can explain meaning and significance of terms used in recorded conversation relating to money laundering).

F. Cross-examination of government agent:

— *United States v. Carter*, 966 F. Supp. 336 (E.D. Pa. 1997) (court properly limited defendant's ability to adduce evidence of undercover agent's sexual misconduct on cross-examination); *United States v. Ellis*, 1997 WL 297080 (E.D. Pa. May 22, 1997) (same case).

G. Dog sniff:

— *United States v. Oreira*, 29 F.3d 185 (5th Cir. 1994) (dog sniff not admissible to show *knowledge* that money was SUA proceeds, distinguishing cases where dog sniff admitted to show money was proceeds).

H. Rule 404(b):

— *United States v. Bornfield*, 145 F.3d 1123 (10th Cir. 1998) (evidence of defendant's prior drug use with third party, not the person who was the source of the laundered cash, was irrelevant and therefore inadmissible, but error was harmless).

— *United States v. One 1989 Jaguar XJ6*, 1993 WL 157630 (N.D. Ill. May 13, 1993) (automobile used to drive to/from site of money laundering offense is not substantially connected).

— *But see United States v. One Parcel . . . 613 Warwick Road*, 1995 WL 214451 (E.D. Pa. Apr. 10, 1995) (denying motion to dismiss section 981 forfeiture of building where defendants met to plan to cash checks in violation of section 1957).

— *United States v. One 1986 Ford Pickup*, 56 F.3d 1181 (9th Cir. 1995) (drug case: vehicle used to distribute drug proceeds is substantially connected to drug sale that was completed before vehicle was involved).

b. But property used to help the launderer conceal or disguise the SUA proceeds, in violation of section 1956(a)(1)(B)(i), is involved in the offense:

i. Bank accounts:

— *United States v. Tencer*, 107 F.3d 1120 (5th Cir. 1997) (entire bank account balance is forfeitable even though less than half the balance was criminal proceeds if the purpose of the deposit was to conceal or disguise proceeds among legitimate funds).

— *United States v. Bornfield*, 145 F.3d 1123 (10th Cir. 1998) ("forfeiture of legitimate and illegitimate funds commingled in an account is proper as long as the Government demonstrates that the defendant pooled the funds to facilitate; *i.e.*, disguise the nature and source of, his scheme); *id.* (if money laundering offense consists of writing check on bank account, money remaining in the account is not the "corpus," but may be forfeitable as facilitating property).

— *United States v. Hawkey*, 148 F.3d 920, 928 n.13 (8th Cir. 1998) (dicta) (citing *Bornfield* with approval, and noting that in some instances it may be appropriate to order the forfeiture of an account containing commingled tainted and untainted funds).

— *United States v. Trost*, 152 F.3d 715 (7th Cir. 1998) (dicta) (legitimate funds may be forfeited if used to disguise illegitimate funds).

— *United States v. All Monies*, 754 F. Supp. 1467, 1475-76 (D. Haw. 1991) (untainted money in account provided "cover" for laundering operation); *United States v. Certain Funds on Deposit in Account No. 01-0-71417*, 769 F. Supp. 80, 84-85 (E.D.N.Y. 1991) (same); *United States v. Certain Accounts*, 795 F. Supp. 391, 397 (S.D. Fla. 1992).

Part II—Money Laundering Forfeiture

18 U.S.C. §§ 981-82

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2. Commingled money:

   See cases in 1956/1957 outline holding that a financial transaction constitutes a money laundering offense even if only a portion of the money is SUA proceeds.

   — *See, e.g., United States v. Rodriguez*, 53 F.3d 1439 (7th Cir. 1995) (purchase of house involved SUA proceeds even though only $1,000 of $17,000 payment was drug money).

   — *See generally United States v. One Single Family Residence Located at 15603 85th Ave.*, 933 F.2d 976 (11th Cir. 1991) (once property owner knowingly commingles legitimate property with tainted property, he loses all right to assert that a portion of the property subject to forfeiture had a legitimate source).

3. Property bought or sold in the transaction:

   a. The property bought or sold in the course of the financial transaction is "involved in" the offense:

      — *United States v. 657 Acres of Land in Park County*, 978 F. Supp. 999 (D. Wyo. 1997) (ranch purchased with drug proceeds forfeited under section 981 where defendant used cash to make purchase in false name, thus committing violation of section 1956(a)(1)(B)(i));

      — *United States v. One 1988 Prevost Liberty Motor Home*, 952 F. Supp. 1180 (S.D. Tex. 1996) (motor-home purchased with proceeds of bankruptcy fraud forfeited).

      — *United States v. Basler Turbo-67*, 906 F. Supp. 1332, 1340 (D. Ariz. 1995) (aircraft purchased with drug money is forfeitable under sections 981 and 1956-57).

      — *United States v. Premises Known as 3 Jade Lane*, 1995 WL 580072 (E.D. Pa. Sept. 28, 1995) (real property purchased in a transaction that violates section 1957 is forfeitable as property involved in the offense).

   b. Such property is forfeitable in its entirety, even if legitimate funds were also invested in the property:

      — *United States v. One 1987 Mercedes Benz 300E*, 820 F. Supp. 248, 252 (E.D. Va. 1993) (where sections 1956 and 1957 financial transaction is car payment, car is "involved in" the money laundering offense and is forfeitable in its entirety even if legitimate funds are used to make other payments).

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So it is clear that sections 981 and 982 now apply to more than the proceeds being laundered.

— *United States v. Hawkey*, 148 F.3d 920 (8th Cir. 1998) (when defendant is convicted of both section 1957 and the underlying SUA, forfeiture is properly imposed under the broader money laundering statute, section 982(a)(1), and is not limited to the forfeiture of "proceeds" under section 982(a)(2)).

— *United States v. Saccoccia*, 823 F. Supp. 994 (D.R.I. 1993) (property is "involved" whether it was the subject of the offense or the proceeds generated by it), *aff'd*, 58 F.3d 754 (1st Cir. 1995).

— *United States v. Trost*, 152 F.3d 715 (7th Cir. 1998) (forfeiture under section 982 is not limited to the proceeds being laundered).

— *United States v. Thompson*, 837 F. Supp. 585, 586 (S.D.N.Y. 1993) (section 982 is not limited to forfeiture of proceeds), *aff'd*, 29 F.3d 62 (2d Cir. 1994); *United States v. Sellers*, 848 F. Supp. 73, 75 (E.D. La. 1994) (same).

— *But see United States v. Voight*, 89 F.3d 1050 (3d Cir. 1996) (rationale for applying the "preponderance" standard to money laundering forfeitures and not the "reasonable doubt" standard that applies to RICO is that RICO forfeitures can apply to wide range of property while money laundering forfeitures are limited to the amount of the transaction identified in the indictment) (dicta).

C. What property is involved in the financial transaction?

1. The proceeds of the SUA offense:

a. The SUA proceeds that are moved in the course of the money laundering transaction are "involved in" the offense:

— *United States v. Ladum*, 141 F.3d 1328 (9th Cir. 1998) (property concealed from bankruptcy court was SUA proceeds and was forfeited as property involved in subsequent money laundering designed to conceal and disguise true ownership).

— *United States v. Hawkey*, 148 F.3d 920 (8th Cir. 1998) (the Government entitled to a money judgment for the value of misappropriated funds that were subsequently used to buy consumer goods in violation of section 1957).

— *United States v. Saccoccia*, 823 F. Supp. 994 (D.R.I. 1993) (sum equal to the SUA proceeds laundered, or the amount involved in CTR violations, is forfeitable under section 982), *aff'd*, 58 F.3d 754 (1st Cir. 1995); *United States v. Sellers*, 848 F. Supp. 73 (E.D. La. 1994).

Part II—Money Laundering Forfeiture

18 U.S.C. §§ 981-82

Case Outline

by Stefan D. Cassella, Assistant Chief
Asset Forfeiture and Money Laundering Section

I. Scope of Money Laundering Forfeiture[1]

A. Proof of a substantive offense:

There can be no money laundering forfeiture without proof that the underlying money laundering offense occurred.

— *United States v. Aramony*, 88 F.3d 1369 (4th Cir. 1996) (when substantive money laundering convictions are vacated, forfeitures related to those counts must be vacated as well); *United States v. Tencer*, 107 F.3d 1120 (5th Cir. 1997) (same).

— *United States v. Ramming*, 915 F. Supp. 854 (S.D. Tex. 1996) (same where defendant's motion for judgment of acquittal on underlying fraud offense is granted for lack of evidence).

B. Property "involved in" a money laundering offense:

1. CTR/CMIR cases:

Structured funds are "involved in" the offense.

— *United States v. Real Property 874 Gartel Drive*, 79 F.3d 918 (9th Cir. 1996) (forfeiture of real property purchased with ten cashiers checks in amounts under $10,000).

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— *United States v. Saccoccia*, 823 F. Supp. 994 (D.R.I. 1993) (sum equal to the SUA proceeds laundered, or the amount involved in CTR violations, is forfeitable under section 982), *aff'd*, 58 F.3d 754 (1st Cir. 1995); *United States v. Sellers*, 848 F. Supp. 73 (E.D. La. 1994).

2. Downward departure rejected:

— *United States v. Mankarious*, 151 F.3d 694 (7th Cir. 1998) (cashing or depositing check representing kickback from fraud scheme falls within heartland of money laundering offense).

— *United States v. Morris*, 18 F.3d 562 (8th Cir. 1994) (court may not depart downward to offense level for underlying SUA); *United States v. Adams*, 74 F.3d 1093 (11th Cir. 1996) (same; "departure that completely negates the effect of [the] money laundering convictions is clearly erroneous").

— *United States v. Rose*, 20 F.3d 367 (9th Cir. 1994) (no error in refusing to depart down to offense level for SUA); *United States v. Ripinsky*, 109 F.3d 1436 (9th Cir. 1997) (same; following *Rose*).

— *United States v. Piervinanzi*, 23 F.3d 670 (2d Cir. 1994) (appellate court will not review district court's determination that section 1956(a)(2)(A) offense was a "heartland" offense and that no downward departure was warranted).

— *United States v. Goff*, 20 F.3d 918 (8th Cir. 1994) (no downward departure for "relatively minor" offense if offense is not technical but is precisely the conduct the statute proscribes; distinguishing *Skinner*).

— *United States v. Hager*, 1995 WL 529647 (10th Cir. Sept. 8, 1995) (unpublished) (Congress requires that money laundering and the SUA be punished separately; court is required to use the money laundering guidelines, not the guideline for the SUA, where the offense level for money laundering is higher).

— *United States v. LeBlanc*, 24 F.3d 340 (1st Cir. 1994) (negotiation of checks representing proceeds of gambling is an offense separate from gambling falling in heartland of money laundering), *rev'g* 825 F. Supp. 422 (D. Mass. 1993) *and United States v. Weinstein*, 828 F. Supp. 3 (D. Mass. 1993).

— *United States v. Pierro*, 32 F.3d 611 (1st Cir. 1994) (laundering proceeds of ITSP offense with intent to promote underlying crime is "heartland" offense separate and distinct from the underlying crime for sentencing purposes).

— *United States v. Willey*, 57 F.3d 1374 (5th Cir. 1995) (offense is not outside the heartland just because the money laundering was a relatively minor part of defendant's overall criminal conduct).

— *United States v. Carter*, 1997 WL 297076 (E.D. Pa. May 22, 1997) (inept money launderer's lack of sophistication not ground for downward departure).

— *United States v. Jackson*, Civil No. 95-402-MA, Crim. No. 90-374-MA

2. Commingled money:

   See cases in 1956/1957 outline holding that a financial transaction constitutes a money laundering offense even if only a portion of the money is SUA proceeds.

   — *See, e.g., United States v. Rodriguez*, 53 F.3d 1439 (7th Cir. 1995) (purchase of house involved SUA proceeds even though only $1,000 of $17,000 payment was drug money).

   — *See generally United States v. One Single Family Residence Located at 15603 85th Ave.*, 933 F.2d 976 (11th Cir. 1991) (once property owner knowingly commingles legitimate property with tainted property, he loses all right to assert that a portion of the property subject to forfeiture had a legitimate source).

3. Property bought or sold in the transaction:

   a. The property bought or sold in the course of the financial transaction is "involved in" the offense:

      — *United States v. 657 Acres of Land in Park County*, 978 F. Supp. 999 (D. Wyo. 1997) (ranch purchased with drug proceeds forfeited under section 981 where defendant used cash to make purchase in false name, thus committing violation of section 1956(a)(1)(B)(i));

      — *United States v. One 1988 Prevost Liberty Motor Home*, 952 F. Supp. 1180 (S.D. Tex. 1996) (motor-home purchased with proceeds of bankruptcy fraud forfeited).

      — *United States v. Basler Turbo-67*, 906 F. Supp. 1332, 1340 (D. Ariz. 1995) (aircraft purchased with drug money is forfeitable under sections 981 and 1956-57).

      — *United States v. Premises Known as 3 Jade Lane*, 1995 WL 580072 (E.D. Pa. Sept. 28, 1995) (real property purchased in a transaction that violates section 1957 is forfeitable as property involved in the offense).

   b. Such property is forfeitable in its entirety, even if legitimate funds were also invested in the property:

      — *United States v. One 1987 Mercedes Benz 300E*, 820 F. Supp. 248, 252 (E.D. Va. 1993) (where sections 1956 and 1957 financial transaction is car payment, car is "involved in" the money laundering offense and is forfeitable in its entirety even if legitimate funds are used to make other payments).

laundering conviction was for section 371 conspiracy which carries maximum of five years).

— *United States v. Hargus*, 128 F.3d 1358 (10th Cir. 1997) (where conspiracy "straddles" effective date of increase in offense level, the higher level applies).

C. Multiple-object conspiracy:

— *United States v. Coscarelli*, 105 F.3d 984 (5th Cir. 1997), aff'd *en banc*, 149 F.3d 342 (5th Cir. 1998) (where section371 conspiracy has multiple objects, including money laundering, court treats it as if there were multiple conspiracy counts and groups them under section 3D1.2; if money laundering conspiracy is the most serious, the offense level is determined by section2S1.1, regardless of whether the defendant was also convicted of substantive money laundering).

— *United States v. Ross*, 131 F.3d 970 (11th Cir. 1997) (defendant convicted of section 371 conspiracy with multiple objects, including money laundering, may be sentenced under the money laundering guideline even if acquitted on substantive counts; *see* section 1B1.2(d); but, in absence of special verdict form, court must find that, if it were trier of fact, it would have found defendant guilty of conspiracy to commit money laundering beyond a reasonable doubt).

— *United States v. Conley*, 92 F.3d 157 (3d Cir. 1996) (where section 371 conspiracy consists of multiple objects and jury returns only a general verdict, court may determine, as part of the sentencing process, whether money laundering was one of the objects so that the sentence may be based on the offense level for money laundering).

— *United States v. Nattier*, 127 F.3d 655 (8th Cir. 1997) (notwithstanding general verdict on multi-object conspiracy, court properly based sentence on money laundering guideline where jury also convicted defendants of substantive money laundering).

— *United States v. Miller*, 22 F.3d 1075 (11th Cir. 1994) (where conspiracy consists of multiple objects, court may not base sentence on a given object unless it instructed jury as to all elements of that object).

— *United States v. Castaneda*, 16 F.3d 1504 (9th Cir. 1994) (where defendant convicted of section 371 conspiracy to launder and to structure, court must determine which guidelines to apply).

— *United States v. Blarek*, 7 F. Supp. 2d 192 (E.D.N.Y. 1998) (where jury returns general verdict on section 1956(h) conspiracy alleging both 1956 and 1957 violations as objects, court must determine which guideline to apply).

— *See* cases discussing maximum statutory penalty for section 371 conspiracy at page 63.

G. CMIR forfeitures:

Section 5317(c) authorizes forfeiture for violations of sections 5316 and 5324(b).

— *United States v. $500,000 in United States Currency*, 62 F.3d 59 (2d Cir. 1995) (provision in section 5317(c) authorizing forfeiture for "attempted" violations of section 5324(b) refers only to attempts that are criminal violations of section 5324(b) by its terms; it does not create forfeiture liability for attempts to commit other violations of that statute).

The entire amount is subject to forfeiture, not just the difference between what was transported and what was declared.

— *United States v. U.S. Currency ($883,506)*, 96-CV-1004 (CBA) (E.D.N.Y. July 23, 1997) (unpublished) (no credit given for the $60,000 that defendant did declare on the CMIR form), following *United States v. $80,320*, 1992 WL 72957 (E.D.N.Y. Mar. 12, 1992) (unpublished).

No willfulness or specific intent required to establish CMIR forfeiture.

— *United States v. $170,000*, 903 F. Supp. 373 (E.D.N.Y. 1995) (property becomes forfeitable at the time the owner leaves it with a common carrier and fails to file CMIR form).

— *United States v. U.S. Currency ($883,506)*, 96-CV-1004 (CBA) (E.D.N.Y. July 23, 1997) (unpublished) (under section 5317, the Government is not required to prove that the person transporting the currency knew about the reporting requirement or willfully intended to violate it; it is only necessary to show that the person knew he had the currency and didn't disclose it).

H. Multiplication of amount subject to forfeiture:

There is little or no case law as to whether the amount subject to forfeiture multiplies each time the defendant uses the same funds to commit a new money laundering violation.

— *But cf. United States v. Li*, 973 F. Supp. 567 (E.D. Va. 1997) (for sentencing purposes, court may count the same money each time it is transferred, even if that results in double or triple counting; rejecting argument that sentencing calculation is limited to the amount defendant infused into the scheme).

K. Conspiracy:

— *United States v. Knapp*, 120 F.3d 928(9th Cir. 1997) (instruction must require jury to find that defendant "had to have knowledge of the objective of the conspiracy—money laundering—and that he had to intend to accomplish it").

— *United States v. Abrego*, 141 F.3d 142 (5th Cir. 1998) (where the conspiracy straddles the effective date of the statute, the jury must be told what the effective date is, and must find that the conspiracy continued after that date).

— *United States v. Narviz-Guerra*, 148 F.3d 530 (5th Cir. 1998) (conspiracy does not require unanimity instruction as to object of the conspiracy; where indictment alleges conspiracy to commit section 1956(a)(2) offense, jury does not need to agree that plan was to send money into, and not out of, the United States).

K. *Pinkerton* instruction:

— *United States v. Sax*, 39 F.3d 1380 (7th Cir. 1994) (the Government may get *Pinkerton* instruction relating to liability for money laundering offenses where indictment alleges money laundering acts as overt acts of a drug conspiracy).

L. Variance:

Variance from language in the indictment was harmless error.

— *United States v. Restivo*, 8 F.3d 274 (5th Cir. 1993) (where indictment alleged intent to promote SUA of bank fraud, court's failure to limit definition of SUA to bank fraud was not a constructive amendment to the indictment).

M. Special verdicts:

— *United States v. Nattier*, 127 F.3d 655 (8th Cir. 1997) (general verdict is adequate, even though indictment alleged alternative mental states, as long as court instructed jury it had to be unanimous as to the theory supporting conviction).

XXV. Guilty Plea

— *United States v. Coscarelli*, 149 F.3d 342 (5th Cir. 1998) (*en banc*) (when defendant pleads to section 371 conspiracy with money laundering object, court should apprise defendant that maximum sentence is 20 years, and should ascertain factual basis for money laundering object) (dissenting opinion. majority disposed of case on procedural grounds).

— *United States v. Saccoccia*, 823 F. Supp. 994 (D.R.I. 1993) (exception not applicable where alleged intermediary was a smurf who was convicted under 31 U.S.C. § 5322(b) for having laundered more than $100,000 in more than three transactions; leaders of professional money laundering operation are clearly not intermediaries), *aff'd*, 58 F.3d 754 (1st Cir. 1995), *aff'd sub. nom. United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995).

— *United States v. Bornfield*, 145 F.3d 1123 (10th Cir. 1998) (dicta) (accountant who gave client check in exchange for cash drug proceeds was probably a mere intermediary).

— *See generally* Criminal Forfeiture Case Outline.

VIII. Excessive Fines

A. CMIR forfeitures:

— *United States v. Bajakajian*, ___ U.S. ___, 118 S. Ct. 2028 (1998) (forfeiture of the entire amount of unreported declared currency would be grossly disproportional to the gravity of the offense in violation of the Eighth Amendment, unless the money was involved in the commission of another offense), *aff'g* 84 F.3d 334 (9th Cir. 1996).

— *United States v. $69,292.00 in U.S. Currency*, 62 F.3d 1161 (9th Cir. 1995) (forfeiture of undeclared funds under section 5317 triggers Eighth Amendment analysis).

B. CTR forfeitures:

— *United States v. Funds in the Amount of $170,926.00*, 985 F. Supp. 810 (N.D. Ill. 1997) (pre-*Bajakajian* decision rejecting motion to dismiss complaint on ground that forfeiture of structured funds not derived from illegal source was *per se* unconstitutional).

C. Sections 1956 and 1957 forfeitures:

— *United States v. Ladum*, 141 F.3d 1328 (9th Cir. 1998) (forfeiture of laundered proceeds of bankruptcy fraud not excessive because forfeiture deprives defendant of property he had no right to retain anyway).

— *United States v. Tencer*, 107 F.3d 1120 (5th Cir. 1997) (application of facilitation theory to money laundering forfeiture does not lead to imposition of excessive fine, where amount forfeited ($1 million) included $450,000 in fraud proceeds and the balance in untainted funds).

— *But see United States v. Nattier*, 127 F.3d 655 (8th Cir. 1997) (if the Government alleges alternative specific intents in same count, court must instruct jury that it must be unanimous as to which mental state is the basis for the conviction).

E. Conceal or disguise:

— *United States v. Carter*, 966 F. Supp. 336 (E.D. Pa. 1997) (quoting approved instruction on intent to conceal or disguise).

F. Elements of the money laundering offense:

— *United States v. Lovett*, 964 F.2d 1029 (10th Cir. 1992) (failure to define "monetary transaction" in section 1957 case not plain error where there was overwhelming evidence that defendant's conduct was a monetary transaction).

— *United States v. DeSantiago-Flores*, 107 F.3d 1472 (10th Cir. 1997) (failure to define "transaction" is not plain error; definition in section 1956(c)(3) is not highly technical).

— *United States v. Bell*, No. 92-5656 (4th Cir. Aug. 16, 1993) (unpublished) (court's giving instructions that included elements of subsections of section 1956 not charged is not error absent showing that irrelevant instructions caused prejudice).

— *United States v. Rockson*, 1996 WL 733945 (4th Cir. Dec. 24 1996) (unpublished) (court should instruct jury that it must find that money transmitter was a "financial institution"; it may not take the issue away from the jury by telling them the transmitter is in fact a financial institution, even if it is obvious).

G. $10,000 Requirement for section 1957:

— *United States v. Adams*, 74 F.3d 1093, 1101 (11th Cir. 1996) (court should make it clear that although not all of the property must be criminally-derived, at least $10,000 worth of it must be criminally-derived).

— *United States v. Brown*, 1998 WL 166423 (4th Cir. 1998) (unpublished) (jury instructed that $10,000 requirement is satisfied only if it found that purchase of several automobiles on same day constituted a single monetary transaction).

H. Interstate commerce:

— *United States v. Van Brocklin*, 115 F.3d 587(8th Cir. 1997) (finding it unnecessary to determine whether effect on interstate commerce is a separate element of section 1957 offense on which jury must be instructed, because court defined "monetary transaction" as a transaction affecting interstate commerce).

— *United States v. Ripinsky*, 109 F.3d 1436 (9th Cir. 1997) (telling jury that deposit of a

II. Jury Instructions

A. Property involved in the offense:

— *United States v. Bornfield*, 145 F.3d 1123 (10th Cir. 1998) (preferable that court define "involved in" as including the corpus, commissions, and facilitating property, but no reversible error if court fails to do so).

III. Establishing Basis for Civil Forfeiture in Money Laundering Cases

A. Substantive elements:

— *United States v. One 1988 Prevost Liberty Motor Home*, 952 F. Supp. 1180 (S.D. Tex. 1996) (the Government must establish only probable cause to believe money laundering offense and underlying SUA were committed, and that defendant property was involved).

— *United States v. One 1986 Mercedes Benz*, 1996 WL 208493 (D. Mass. Mar. 6, 1996) (absence of legitimate income during time of purchase, and record of arrests for possession of stolen credit cards and stolen mail, sufficient to establish probable cause to believe car was purchased with SUA proceeds in violation of section 1956).

— *United States v. Funds Held in the Name of Wetterer*, ___ F. Supp. 2d ___, 1998 WL 692423 (E.D.N.Y. Sept. 30, 1998) (the Government establishes probable cause to believe mail fraud occurred, proceeds were laundered, and defendant funds were the laundered proceeds).

B. Probable cause must encompass both the prohibited conduct and the mental state required by the relevant statute:

— *United States v. Dollar Bank Money Market Account*, 980 F.2d 233 (3d Cir. 1992) (in structuring case, the Government must have probable cause to believe that property was involved in structured transactions committed with intent to evade federal reporting requirements); *United States v. $200,000*, 805 F. Supp. 585, 590 n.12 (N.D. Ill. 1992) (same).

— *United States v. Leak*, 123 F.3d 787 (4th Cir. 1997) (summary judgment for the Government inappropriate where claimant raises material issue of fact regarding his mental state in committing structuring offense).

— *Marine Midland Bank, N.A. v. United States*, 1994 WL 381536 (S.D.N.Y. July 20, 1994) (willfulness requirement in *Ratzlaf* not applicable to civil forfeiture).

closing statements, did not narrow or amend the indictment).

XXIV. Jury Instructions

A. Willfulness:

— *United States v. Brown*, 31 F.3d 484, 490 n.3 (7th Cir. 1994) (willfulness is not an element of a section 1956 offense, the Government is not reqiured to prove defendants knew that their conduct was illegal; *Ratzlaf* distinguished); *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (same); *United States v. Lewis*, 117 F.3d 980 (7th Cir.1997) (same).

— *United States v. Turman*, 122 F.3d 1167 (9th Cir 1997) (the Government must prove the defendant knew the laundered funds were criminal proceeds, but it is not required to prove the defendant knew that his acts or omissions were illegal).

— *United States v. Arditti*, 955 F.2d 231 (5th Cir. 1992) (willfulness not an element of conspiracy to violate section 1956, and specific intent instruction not required for substantive violation of section 1956(a)(3) as long as court tracks language of (a)(3)(A) and (B) regarding intent to promote and to conceal or disguise).

B. Knowledge:

— *United States v. Stein*, 37 F.3d 1407 (9th Cir. 1994) (even though court instructed jury that defendant must know that laundered money was proceeds of unlawful act, subsequent instruction that defendant need not know his conduct was unlawful may have negated the first instruction and confused the jury; conviction reversed).

— *United States v. Turman*, 122 F.3d 1167 (9th Cir 1997) (in instructing jury that defendant doesn't have to know that money laundering is illegal, court must make clear that defendant nevertheless must know that the laundered funds are proceeds of criminal activity; but failure to make this clear in instruction given before *Stein* was decided is not plain error); *United States v. Ripinsky*, 109 F.3d 1436 (9th Cir. 1997) (same).

— *United States v. Knapp*, 120 F.3d 928 (9th Cir. 1997) (where instruction made clear that notwithstanding the general knowledge instruction, the jury still had to find defendant knew the property was SUA proceeds, there is no reason to reverse the conviction under *Stein*); *United States v. Ly*, 141 F.3d 1181 (9th Cir. 1998) (Table) (same).

— *United States v. Klinger*, 128 F.3d 705 (9th Cir. 1997) (no plain error, despite *Stein* violation, where defendant was convicted of "knowingly" laundering the proceeds of SUA that he himself committed).

1992); *United States v. All Funds Presently on Deposit at American Express Bank*, 2832 F. Supp. 542, 562 (E.D.N.Y. 1993).

— *United States v. Bornfield*, 145 F.3d 1123 (10th Cir.1998) (following *$488,342.85*; account number is used for identification purposes and is not itself a forfeitable item).

B. Forfeiture of entire account may be based on circumstantial evidence:

— *United States v. Certain Accounts*, 795 F. Supp. 391, 397 (S.D. Fla. 1992) (deposit of numerous money orders in amounts just under $10,000 into an account sufficient to establish probable cause for forfeiture of entire account even though balance exceeded total value of money orders).

— *United States v. U.S. Currency ($199,710.00)*, 96 CV 2241 (ERK) (RML) (E.D.N.Y. Mar. 20, 1998) (if the Government has probable cause to believe that a bank account is used exclusively for money laundering, it does not have to establish a separate money laundering nexus for each deposit into the account).

C. If probable cause cannot be established by circumstantial evidence or facilitation theory, the Government must trace money to offense giving rise to forfeiture:

— *United States v. Banco Cafetero Panama*, 797 F.2d 1154, 1158-62 (2d Cir. 1986) (drug case: the Government is entitled to use "first in, first out" or "first in, last out" analysis in tracing tainted funds through volatile bank account, but the Government is subject to the "lowest intermediate balance" rule).

— *United States v. $488,342.85*, 969 F.2d 474, 476-77 (7th Cir. 1992) (section 981 case discussing application of *Banco Cafetero* to money laundering; strict tracing, such as employed in the law of trusts, not required in civil forfeiture cases).

D. In civil cases, tracing the seized property to criminal activity is part of the Government's probable cause burden:

— *Marine Midland Bank, N.A. v. United States*, 11 F.3d 1119 (2d Cir. 1993) (failure of the Government to establish probable cause to seize entire account at time of seizure results in return of property pretrial).

— *United States v. All Funds Presently on Deposit at American Express Bank*, 832 F. Supp. 542 (E.D.N.Y. 1993) ("probable cause to seize and forfeit an active bank account . . . requires that the funds in that account be somehow 'traceable' to the alleged unlawful activity that gave rise to the forfeiture in the first place").

— *United States v. All Funds on Deposit (Great Eastern Bank)*, 804 F. Supp. 444, 446 (E.D.N.Y. 1992) (the Government must establish probable cause with respect to *all* of

laid out fraud scheme in detail).

J. Alleging aiding and abetting:

— *United States v. Espy*, 1996 WL 607020 (E.D. La. 1996) (indictment need not specify whether defendant is charged as a principal or as an aider and abettor).

K. Conspiracy:

— *United States v. Conley*, 37 F.3d 970, 981 n.15 (3d Cir. 1994) (section 371 conspiracy to commit money laundering need not allege every element of the substantive offense); *United States v. Wydermyer*, 51 F.3d 319 (2d Cir. 1995) (same).

— It is sufficient to allege that defendants "conspired to launder money in violation of section1956(a)(3)(B)." *United States v. Fuller*, 974 F.2d 1474 (5th Cir. 1992); *see United States v. Sierra-Garcia*, 760 F. Supp. 252, 258 (E.D.N.Y. 1991).

— *But see United States v. Akpi*, No. 92-5481 (4th Cir. 1993) (unpublished) (in section 1029 case, essential elements of the substantive offense, including affect on interstate commerce, must be alleged in conspiracy count and included in jury instructions).

— *United States v. Knowles*, 2 F. Supp.2d 1135 (E.D. Wis. 1998) (alleging defendant conspired to commit "money laundering" does not sufficiently identify the offense defendant conspired to commit. Government must at least allege nature of financial transaction and SUA).

XXI. Joinder and Severance

A. Joinder of counts:

— *United States v. Misher*, 99 F.3d 664 (5th Cir. 1996) (no error is denying severance of drug conspiracy count from substantive money laundering).

— *United States v. Jordan*, 112 F.3d 14 (1st Cir. 1997) (joinder of tax count with money laundering and fraud counts was prejudicial because defense to tax count would have incriminated defendant on other counts).

B. Joinder of defendants:

— *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (money laundering charges against X were properly joined with charges against Y where all transactions occurred within a short time period and involved common cast of characters; uncharged conduct is relevant to propriety of joinder).

3. Interbank account exception:

   — Foreign bank not entitled to interbank account exception in section 984(d) if employees knew of the illegal scheme. *United States v. $814,254.76 in U.S. Currency*, No. CIV 92-659 TUC ACM (D. Ariz. Jan. 10, 1994) (unpublished), *rev'd on other grounds*, 51 F.3d 207 (9th Cir. 1995).

   — Foreign bank not entitled to interbank account exception where the Government seeks forfeiture of property directly traceable to the offense, not fungible property; *Marine Midland Bank, N.A. v. United States*, 1994 WL 381536 (S.D.N.Y. July 20, 1994), *renewed motion for return of funds denied*, 1995 WL 450483 (S.D.N.Y. Jul. 31, 1995).

   — *United States v. All Funds on Deposit . . . in the Name of Perusa, Inc.*, 935 F. Supp. 208 (E.D.N.Y. 1996) (money transmitter is not a financial institution for purposes of section 984(d); definition in 18 U.S.C. § 20, not 31 U.S.C. § 5312, applies).

4. Section 984 does not apply retroactively:

   — *United States v. $814,254.76 in U.S. Currency*, 51 F.3d 207 (9th Cir. 1995).

   — *United States v. Contents of Account Numbers 208-06070*, 847 F. Supp. 329 (S.D.N.Y. 1994).

V. Establishing Basis for Forfeiture in Other Cases

A. FIRREA cases:

Property traceable to proceeds of bank fraud offense.

— *United States v. Real Property 874 Gartel Drive*, 79 F.3d 918 (9th Cir. 1996) (forfeiture of real property purchased with proceeds of section 1014 violation).

B. Intangible property:

Electronic funds exist as a credit at the intermediate bank used in a wire transfer, and constitute a *res* that may be seized from the intermediate bank.

— *United States v. Daccarett*, 6 F.3d 37 (2d Cir. 1993).

B. Bill of particulars:

— *United States v. Parlavecchio*, 903 F. Supp. 788 (D.N.J. 1995) (defendant's request for bill of particulars regarding underlying SUA offense that generated proceeds laundered in each instance denied; schedule of check numbers, dates and amounts included in indictment is sufficient detail).

— *United States v. Finn*, 919 F. Supp. 1305 (D. Minn. 1995) (no bill of particulars needed where indictment gives date, amount and location of financial transaction).

C. Alleging the SUA being promoted:

— *United States v. Mankarious*, 151 F.3d 694 (7th Cir. 1998) (because proof of a specific predicate offense is not required, the indictment need not specify the particular mail fraud offense underlying the money laundering charge).

— *United States v. Bitzur*, 1996 WL 665621 (S.D.N.Y. Nov. 18, 1996) (because the elements of the section 2314 offense being promoted are "ancillary to" and not the "core" of the criminality in a money laundering offense, it is sufficient to allege that the defendant intended to promote a violation of section 2314 without alleging the elements of that offense).

D. Alleging the financial transaction:

— *United States v. Flores*, 63 F.3d 1342 (5th Cir. 1995) (not necessary to describe financial transactions in the indictment. tracking the language of the statute is sufficient).

E. Alleging the knowledge element:

— *United States v. Carr*, 25 F.3d 1194, 1205 n.5 (3d Cir. 1994) (indictment need not allege what form of unlawful activity defendant believed to be the source of the proceeds being laundered).

F. Alleging willfulness:

— *United States v. Cancelliere*, 69 F.3d 1116 (11th Cir. 1995) (willfulness is not an element of the offense and need not be alleged in the indictment, but if the Government does allege willfulness, and the defendant relies on that in putting on a defense, he is entitled to a willfulness instruction).

G. Alleging "belief" in sting cases:

— *United States v. Wydermyer*, 51 F.3d 319 (2d Cir. 1995) (failure to allege that defendant charged with section 1956(a)(3)(B) violation believed property was the

1995 WL 381659 (D. Mass. June 16, 1995) (wealthy Colombian who purchased 182 dollar-denominated money orders totaling $100,000 was innocent owner because he did not recognize structured nature of instruments; no duty to inquire as to source of the money).

D. *Calero-Toledo* standard in section 5317 cases:

— *United States v. $69,292.00 in U.S. Currency*, 62 F.3d 1161 (9th Cir. 1995) (even though section 5317 does not contain an innocent owner provision, owner who took all reasonable steps to prevent illegal use may defeat forfeiture).

— *But see United States v. $124,813 in U.S. Currency*, 53 F.3d 108 (5th Cir. 1995) (*Calero-Toledo* did not create a general innocent owner defense applicable to section 5317 forfeitures).

— *United States v. $83,132.00 in United States Currency*, 1996 WL 599725 (E.D.N.Y. Oct. 11, 1996) (under *Bennis*, there is no innocent owner defense in CMIR cases).

E. Black market cases:

— *United States v. Basler Turbo-67*, 906 F. Supp. 1332 (D. Ariz. 1995) (person who knows property was purchased with funds traceable to the black market in Colombia is not an innocent owner; that black market funds come from drug dealing is common knowledge in that country).

F. Willful blindness:

— *United States v. Real Property 874 Gartel Drive*, 79 F.3d 918 (9th Cir. 1996) (willful blindness is the same as "knowledge" under section 981(a)(2)).

— *United States v. All Monies*, 754 F. Supp. 1467, 1478 (D. Haw. 1991) (claimant must prove "that he did not know of the illegal activity, did not willfully blind himself to the illegal activity, and did all that reasonably could be expected to prevent the illegal use" of his property); *United States v. All Funds Presently on Deposit at American Express Bank*, 832 F. Supp. 542 (E.D.N.Y. 1993) (same).

VII. Criminal Forfeiture

A. Criminal forfeiture is a sentencing issue:

— *United States v. Bornfield*, 145 F.3d 1123 (10th Cir. 1998) (citing *Libretti*).

149 F.3d 342 (5th Cir. 1998) (effect of section 1956(h) is to raise the maximum penalty for a section 371 conspiracy to 20 years if section 1956 violation is charged as an object).

XIX. Civil Money Laundering Enforcement: 18 U.S.C. § 1956(b)

— *United States v. Haywood*, 864 F. Supp. 502 (W.D.N.C. 1994) (civil suit against attorney for laundering proceeds).

XX. Form of Indictment

A. Multiplicity/Duplicity:

— *United States v. Klinger*, 128 F.3d 705 (9th Cir. 1997) (multiplicity/duplicity challenge is waived if not raised pretrial).

1. Alternative mental states:

— *United States v. Navarro*, 145 F.3d 580 (3d Cir. 1998) (alternative intents should be alleged in the conjunctive in the same count in the indictment. they represent separate means of committing the same offense).

— *United States v. Holmes*, 44 F.3d 1150 (2d Cir. 1995) (it is multiplicitous to charge defendant in multiple counts with violations of different subsections of section 1956(a)(1) based on same financial transaction).

— *United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995) (no error in charging intent to promote and intent to conceal or disguise in same count where jury instruction was worded conjunctively, requiring jury to find both intents to convict).

— *But see United States v. Brown*, 944 F.2d 1377 (7th Cir. 1991) (the Government should be cautious about alleging intent to promote and purpose to conceal or disguise in conjunctive in same count); *United States v. Winfield*, 997 F.2d 1076 (4th Cir. 1993) (no discussion, but multiple convictions based on same transaction affirmed).

— *Cf. Schad v. Arizona*, 501 U.S. 624 (1991), *reh'g denied*, 501 U.S. 1277 (1991) (in murder case, alternative mental states—premeditation and felony murder—may be alleged in the conjunctive in the same count); *Griffin v. United States*, 502 U.S. 46 (1991) (when multiple objects of conspiracy are alleged in the conjunctive, general guilty verdict will be sustained).